

## REGULAR COUNCIL MEETING – AGENDA #28

If due to a disability, you need auxiliary aids or services during a City Council Meeting, please provide the City with 72 hours' notice by calling 763-493-8141 or faxing 763-493-8391.

***Our Vision: Brooklyn Park, a thriving community inspiring pride where opportunities exist for all.***

### ***Our Brooklyn Park 2025 Goals:***

***• A united and welcoming community, strengthened by our diversity • Beautiful spaces and quality infrastructure make Brooklyn Park a unique destination • A balanced economic environment that empowers businesses and people to thrive • People of all ages have what they need to feel healthy and safe • Partnerships that increase racial and economic equity empower residents and neighborhoods to prosper • Effective and engaging government recognized as a leader***

## **I. ORGANIZATIONAL BUSINESS**

### **1. CALL TO ORDER/ROLL CALL/PLEDGE OF ALLEGIANCE**

**2. PUBLIC COMMENT AND RESPONSE 7:00 p.m.** Provides an opportunity for the public to address the Council on items which are not on the agenda. Public Comment will be limited to 15 minutes (*if no one is in attendance for Public Comment, the regular meeting may begin*), and it may not be used to make personal attacks, to air personality grievances, to make political endorsements or for political campaign purposes. Individuals should limit their comments to three minutes. Council Members will not enter into a dialogue with citizens. Questions from the Council will be for clarification only. Public Comment will not be used as a time for problem solving or reacting to the comments made, but rather for hearing the citizen for informational purposes only.

#### **2A. RESPONSE TO PRIOR PUBLIC COMMENT**

#### **2B. PUBLIC COMMENT**

**3A. APPROVAL OF AGENDA** (Items specifically identified may be removed from Consent or added elsewhere on the agenda by request of any Council Member.)

### **3B. PUBLIC PRESENTATIONS/PROCLAMATIONS/RECEIPT OF GENERAL COMMUNICATIONS**

**3B.1** Accept the "Step To It Challenge" – Most Active Community Award

**3B.2** Proclamation Declaring August 3 – August 10, 2019 as Oromo Week in the City of Brooklyn Park

**A.** PROCLAMATION

**3B.3** Proclamation Proclaiming July 22 through 27, 2019 as Liberian Independence Week

**A.** PROCLAMATION

**3B.4** 2019 Park and Recreation Month Proclamation

**A.** PROCLAMATION

**3B.5** National Night Out Proclamation

**A.** PROCLAMATION

**3B.6** Presentation on International Making Cities Livable Conference

## **II. STATUTORY BUSINESS AND/OR POLICY IMPLEMENTATION**

**4. CONSENT** (All items listed under Consent, unless removed from Consent in agenda item 3A, shall be approved by one council motion.) Consent Agenda consists of items delegated to city management or a commission but requires council action by State law, City Charter or city code. These items must conform to a council approved policy, plan, capital improvement project, ordinance or contract. In addition, meeting minutes shall be included.

**4.1** Approve Professional Service Agreement with WSB for Design Development and Construction Bid Documents for River Park Redevelopment Plan

**A.** RESOLUTION

**B.** RIVER PARK MASTER PLAN CONCEPT PLAN

**C.** WSB LETTER FOR ESTIMATE FOR PROFESSIONAL SERVICE FEE

- 4.2 Approve a Temporary On-Sale Liquor License for the Brooklyn Park Lions Beer Tent at Hy-Vee Car Show and Pork Roast to be held August 9, 2019 at 9409 Zane Avenue North
- 4.3 Approve a Temporary On-Sale Liquor License for the Church of St. Vincent de Paul for their Harvest Fest to be held September 15, 2019 at 9100 93<sup>rd</sup> Avenue North
- 4.4 Approval of Minutes
  - A. CITY COUNCIL MEETING MINUTES, MAY 29, 2018
  - B. CITY COUNCIL MEETING MINUTES, OCTOBER 22, 2018
  - C. CITY COUNCIL MEETING MINUTES, JUNE 24, 2019
  - D. CITY COUNCIL MEETING MINUTES, JULY 8, 2019
- 4.5 Second Reading of an Ordinance to Consider the Recommendation of the Brooklyn Park Charter Commission Amending Charter Chapters 2, 3, 4, 5, 6, 7, 8, 12, 13 and 14, and Adding Sections 4.10 and 14.01A of the Home Rule City Charter
  - A. ORDINANCE
  - B. SUMMARY ORDINANCE
- 4.6 Approve a Temporary On-Sale Liquor License for St. Gerard's Church for their Corn Fest to be held August 9-10, 2019 at 9600 Regent Avenue North

**The following items relate to the City Council's long-range policy-making responsibilities and are handled individually for appropriate debate and deliberation. (Those persons wishing to speak to any of the items listed in this section should fill out a speaker's form and give it to the City Clerk. Staff will present each item, following in which audience input is invited. Discussion will then be closed to the public and directed to the council table for action.)**

## **5. PUBLIC HEARINGS**

- 5.1 Public Hearing Authorizing the Submittal of an Application to the Minnesota Department of Employment and Economic Development for a Grant under the Minnesota Investment Fund Program
  - A. RESOLUTION
- 5.2 Approve an Off-Sale Intoxicating Liquor License for D&A Maikkula Corporation dba Pixie Liquor, 1512 Brookdale Drive North, Brooklyn Park

## **6. LAND USE ACTIONS**

- 6.1 "Edinburgh Plaza" (Landform Professional Services, LLC, Kevin Shay) – Plat #19-112 to Subdivide Existing Edinburgh Plaza into Two Lots: One for McDonalds and One for the Multi-Tenant Retail Building at 1400 through 1480 85<sup>th</sup> Avenue North
  - A. RESOLUTION – PLAT
  - B. RESOLUTION – CUP
  - C. LOCATION MAP
  - D. PLANNING AND ZONING INFORMATION
  - E. PLANNING COMMISSION MINUTES
  - F. PLANS
- 6.2 APC Towers III, LLC – Conditional Use Permit #19-113 to Allow a 125-foot Bell Tower to Support up to Three Wireless Service Providers including T-Mobile at 5840 69<sup>th</sup> Avenue North
  - A. RESOLUTION
  - B. LOCATION MAP
  - C. PLANNING AND ZONING INFORMATION
  - D. PLANNING COMMISSION MINUTES
  - E. APPLICANT'S NARRATIVE
  - F. PLANS
- 6.3 "Pemberly" (Pulte Homes) – Conditional Use Permit, Amended Development Plan, and Preliminary Plat #19-114 for a 105-Unit Residential Townhome Development Northwest of 93<sup>rd</sup> and Regent Avenues
  - A. RESOLUTION – DEVELOPMENT PLAN AMENDMENT AND PRELIMINARY PLAT
  - B. RESOLUTION – CONDITIONAL USE PERMIT/DEVELOPMENT PLAN
  - C. LOCATION MAP
  - D. PLANNING AND ZONING INFORMATION
  - E. LETTERS FROM NEIGHBORS
  - F. PLANNING COMMISSION MINUTES
  - G. DEVELOPER'S NARRATIVE
  - H. PLANS

**7. GENERAL ACTION ITEMS**

- 7.1** Amorce I Limited Partnership Conduit Bond Issuance (Housing Revenue Bond)
  - A.** RESOLUTION  
*(Attachments 7.1B through 7.1I are available in the electronic packet only)*
  - B.** INDENTURE
  - C.** BP AMORCE I 2019A LOAN AGREEMENT
  - D.** BP AMORCE I 2019B FORM OF NOTE
  - E.** BP AMORCE I 2019B LOAN AGREEMENT
  - F.** BP AMORCE I 2019B ASSIGNMENT OF LOAN AGREEMENT
  - G.** BP AMORCE I 2019 REGULATORY AGREEMENT (BROOKS LANDING)
  - H.** BP AMORCE I 2019 REGULATORY AGREEMENT (BROOKS GARDENS)
  - I.** BP AMORCE I 2019A UCC-1
- 7.2** Sister City Relationships Process and Proposal
  - A.** PROCESS AND CRITERIA FOR SISTER CITY PARTNERSHIPS
  - B.** PROPOSAL FROM GAROWE, SOMALIA

**III. DISCUSSION – These items will be discussion items but the City Council may act upon them during the course of the meeting.**

- 8. DISCUSSION ITEMS**  
None

**IV. VERBAL REPORTS AND ANNOUNCEMENTS**

- 9A. COUNCIL MEMBER REPORTS AND ANNOUNCEMENTS**
- 9B. CITY MANAGER REPORTS AND ANNOUNCEMENTS**

**V. ADJOURNMENT**

Since we do not have time to discuss every point presented, it may seem that decisions are preconceived. However, background information is provided for the City Council on each agenda item in advance from city staff and appointed commissions, and decisions are based on this information and past experiences. If you are aware of information that has not been discussed, please raise your hand to be recognized. Please speak from the podium. Comments that are pertinent are appreciated. Items requiring excessive time may be continued to another meeting.

# City of Brooklyn Park Request for Council Action

<b>Agenda Item:</b>	3B.1	<b>Meeting Date:</b>	July 22, 2019
<b>Agenda Section:</b>	Public Presentations/ Proclamations/Receipt of General Communications	<b>Originating Department:</b>	Recreation and Parks
<b>Resolution:</b>	N/A	<b>Prepared By:</b>	Patrice Holter, Program Supervisor
<b>Ordinance:</b>	N/A		
<b>Attachments:</b>	N/A	<b>Presented By:</b>	Michelle Margo
<b>Item:</b>	Accept the "Step To It Challenge" – Most Active Community Award		

## City Manager's Proposed Action:

Accept the "Step to It Challenge" – Most Active Community Award for 2019. Diane Blades from the Hennepin County Public Health Promotion will be in attendance to present the award.

## Overview:

The "Step To It Challenge" has been occurring since 2009. Community members register online and record their activities for a four-week period. There are prizes for the individuals, communities and city councils that are the most active. Activities are converted to "steps." Almost any activity (walking, bicycling, gardening, golfing, running, etc.) can be converted into steps and count toward the individual and community totals. The goal is to encourage healthy lifestyles and incorporate these activities into our daily lives on a regular basis.

The annual four-week physical activity competition runs May 1-28, with 25 communities participating. This year, the event attracted thousands of participants from throughout the metro area. The winner of the 2019 "Step To It Challenge" – Most Active Community Award is Brooklyn Park. We registered more than 588 participants and totaled 125.32 million total steps, making this our 8<sup>th</sup> year of winning this award.

The top two participants in our community from different age categories were:

- Neelam Naik (18-65 age group) walked 1,961,522 steps
- Lait Khoslai (65+) walked 1,865,695 steps

That's a huge step toward a healthier lifestyle and a healthier community.

**Primary Issues/Alternatives to Consider:** N/A

**Budgetary/Fiscal Issues:** N/A

**Attachments:** N/A

# City of Brooklyn Park Request for Council Action

<b>Agenda Item:</b>	3.B2	<b>Meeting Date:</b>	July 22, 2019
<b>Agenda Section:</b>	Public Presentations/ Proclamations/Receipt of General Communications	<b>Originating Department:</b>	Administration
<b>Resolution:</b>	N/A	<b>Prepared By:</b>	Devin Montero, City Clerk
<b>Ordinance:</b>	N/A		
<b>Attachments:</b>	1	<b>Presented By:</b>	Mayor Jeffrey Lunde
<b>Item:</b>	Proclamation Declaring August 3 – August 10, 2019 as Oromo Week in the City of Brooklyn Park		

## City Manager's Proposed Action:

The Mayor shall proclaim August 3 – August 10, 2019 as Oromo Week in the City of Brooklyn Park by one of the following:

1. "I, Jeffrey Lunde, Mayor of the City of Brooklyn Park, Minnesota, do hereby proclaim August 3 – August 10, 2019 as "Oromo Week" in the City of Brooklyn Park"

OR

2. By reading the proclamation.

## Overview:

The annual Oromo Festival in North America is being held in the Twin Cities during the week of August 3 – August 10, 2019.

**Primary Issues/Alternatives to Consider:** N/A

**Budgetary/Fiscal Issues:** N/A

## Attachments:

3B.2A PROCLAMATION

# PROCLAMATION

## DECLARING AUGUST 3 – AUGUST 10, 2019 AS “OROMO WEEK” IN THE CITY OF BROOKLYN PARK

WHEREAS, an estimated 40,000 Oromo, most of whom are refugees and asylees, have come to the Twin Cities Metropolitan Region from their homeland of Oromia Region of Ethiopia, in the Horn of Africa; and

WHEREAS, the annual Oromo Festival in North America will be held in St. Paul and Minneapolis during the week of August 3 – August 10, 2019; and

WHEREAS, Ethiopian Prime Minister Dr. Abiy Ahmed visited Minneapolis on July 30 and July 31, 2018, and decided on opening a General Consulate of the Federal Democratic Republic of Ethiopia in Minnesota, which is currently open and in service; and

WHEREAS, visitors from around the world will be participating in festival events including a soccer tournament, the Run for Oromia, International Oromia Youth Conference, Oromo Chamber of Commerce annual conference, Ethiopian Economic Forum and Human Rights conferences, and a host of cultural and social gatherings; and

WHEREAS, the City of Brooklyn Park joins with our Oromo neighbors and the City of St. Paul, City of Minneapolis and City of Columbia Heights in welcoming these guests to our community.

NOW, THEREFORE, I, Jeffrey Lunde, Mayor of the City of Brooklyn Park do hereby proclaim the week of August 3 to August 10, 2019 as “Oromo Week” and urge all citizens to honor the many contributions made by Oromo residents to the vitality of our community.

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Jeffrey Joneal Lunde, Mayor



5200 85<sup>th</sup> Avenue North  
Brooklyn Park, MN 55443

# City of Brooklyn Park Request for Council Action

<b>Agenda Item:</b>	3B.3	<b>Meeting Date:</b>	July 22, 2019
<b>Agenda Section:</b>	Public Presentations/ Proclamations/Receipt of General Communications	<b>Originating Department:</b>	Administration
<b>Resolution:</b>	N/A	<b>Prepared By:</b>	Wokie Freeman-Gbogba, Assistant City Manager
<b>Ordinance:</b>	N/A		
<b>Attachments:</b>	1	<b>Presented By:</b>	Mayor Jeffrey Lunde
<b>Item:</b>	Proclamation Proclaiming July 22 through 27, 2019 as Liberian Independence Week		

## City Manager's Proposed Action:

The Mayor shall proclaim July 22 through 27, 2019 to be observed as Liberian Independence Week and celebrate the 172<sup>nd</sup> anniversary of Liberia's Declaration of Independence.

1. "I, Jeffrey Lunde, Mayor of the City of Brooklyn Park, Minnesota, do hereby proclaim July 22 through 27, 2019 shall be observed as Liberian Independence Week in the City of Brooklyn Park and celebrate the 172<sup>nd</sup> anniversary of Liberia's Declaration of Independence.

OR

2. By reading the proclamation.

Liberians living in the City of Brooklyn Park and in Minnesota, represented by and through the Organization of Liberians in Minnesota (OLM), are making enormous contributions toward the development of the workforce, cultural diversity and economic growth.

The City of Brooklyn Park is proud to be called home to one of the largest populations of Liberians outside of the Republic of Liberia and has greatly benefited from many residents who have taken an active role in local organizations, city commissions and city government.

Liberia's Independence Day, observed on July 26, is a day to honor and highlight the current and historical relationship between the United States and Liberia, and the vital contributions Liberians make to the United States, to Minnesota, and to Brooklyn Park.

Many activities will be held throughout the community to celebrate Liberia's Independence Day.

**Primary Issues/Alternatives to Consider:** N/A

**Budgetary/Fiscal Issues:** N/A

**Attachments:**

3B.3A PROCLAMATION

# **PROCLAMATION**

## **LIBERIAN INDEPENDENCE WEEK**

### **DECLARING JULY 22 THROUGH 27, 2019 AS LIBERIAN INDEPENDENCE WEEK IN BROOKLYN PARK, MINNESOTA AND CELEBRATING THE 172ND ANNIVERSARY OF LIBERIA'S DECLARATION OF INDEPENDENCE**

WHEREAS, July 26, 2019 marks the 172<sup>nd</sup> anniversary of Liberia's Declaration of Independence and events will be held throughout the week to commemorate the occasion; and

WHEREAS, Liberia, which means "land of the free," was the first nation on the African continent to gain its independence on July 26, 1847; and

WHEREAS, through His infinite mercy and goodness, the Almighty God has blessed the people of Liberia from July 26, 1847, up to the present; and

WHEREAS, Liberians living in the City of Brooklyn Park and in Minnesota, represented by and through the Organization of Liberians in Minnesota (OLM), are making enormous contributions toward the development of the workforce, cultural diversity, and economic growth; and

WHEREAS, Brooklyn Park is proud to be called home to one of the largest populations of Liberians outside of the Republic of Liberia and has greatly benefited from many residents who have taken an active role in local organizations, city commissions and city government; and

WHEREAS, Brooklyn Park recognizes the rich and strong Liberian community that is making our City a thriving, vibrant, and diverse community; and

WHEREAS, Liberia's Independence Day is a day to honor and highlight the current and historical relationship between the United States and Liberia, and the vital contributions Liberians make to the United States, to Minnesota, and to Brooklyn Park.

NOW, THEREFORE, I, Jeffrey Lunde, Mayor of the City of Brooklyn Park, Minnesota, do hereby proclaim July 22 through 27, 2019, shall be observed as Liberian Independence Week in the City of Brooklyn Park.



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Jeffrey Joneal Lunde, Mayor

5200 85<sup>th</sup> Avenue North  
Brooklyn Park, MN 55443

# City of Brooklyn Park Request for Council Action

<b>Agenda Item:</b>	3B.4	<b>Meeting Date:</b>	July 22, 2019
<b>Agenda Section:</b>	Public Presentations/ Proclamations/Receipt of General Communications	<b>Originating Department:</b>	Recreation and Parks
<b>Resolution:</b>	N/A	<b>Prepared By:</b>	Michelle Margo, Supervisor of Programs
<b>Ordinance:</b>	N/A		
<b>Attachments:</b>	1	<b>Presented By:</b>	Jody Yungers, Director of Recreation and Parks
<b>Item:</b>	Park and Recreation Month Proclamation		

## City Manager's Proposed Action:

The Mayor shall proclaim July 2019 to be observed as "Park and Recreation Month" in the City of Brooklyn Park by one of the following:

1. I, Jeffrey Lunde, Mayor of the City of Brooklyn Park, Minnesota, do hereby proclaim July 2019 shall be observed as "Park and Recreation Month" in the City of Brooklyn Park.

OR

2. By reading the proclamation.

## Overview:

**Primary Issues/Alternatives to Consider:** N/A

**Budgetary/Fiscal Issues:** N/A

## Attachments:

3B.4A PROCLAMATION

# ***PROCLAMATION***

## **CITY OF BROOKLYN PARK RECOGNITION OF JULY AS PARK AND RECREATION MONTH**

WHEREAS, parks and recreation programs are an integral part of communities throughout this country, including Brooklyn Park; and

WHEREAS, our parks and recreation are vitally important to establishing and maintaining the quality of life in our communities, ensuring the health of all citizens and contributing to the economic and environmental well-being of a community and region; and

WHEREAS, parks and recreation programs build healthy, active communities that aid in the prevention of chronic disease, provide therapeutic recreation services for persons with mental or physical disabilities, and also improve the mental and emotional health of all citizens; and

WHEREAS, parks and recreation programs increase a community's economic prosperity through increased property values, expansion of the local tax base, increased tourism, the attraction and retention of businesses, and crime reduction; and

WHEREAS, parks and recreation areas are fundamental to the environmental well-being of our community; and

WHEREAS, parks and natural recreation areas improve water quality, protect groundwater, prevent flooding, improve the quality of the air we breathe, provide vegetative buffers to development, and produce habitat for wildlife; and

WHEREAS, our parks and natural recreation areas ensure the ecological beauty of our community and provide a place for children and adults to connect with nature and recreate outdoors; and

WHEREAS, the U.S. House of Representatives has designated July as Parks and Recreation Month; and

WHEREAS, Brooklyn Park recognizes the benefits derived from parks and recreation resources.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brooklyn Park that we recognize July as Park and Recreation Month in the City of Brooklyn Park.

\_\_\_\_\_  
Jeffrey Joneal Lunde, Mayor



5200 85<sup>th</sup> Avenue North  
Brooklyn Park, MN 55443

# City of Brooklyn Park Request for Council Action

<b>Agenda Item:</b>	3B.5	<b>Meeting Date:</b>	July 22, 2019
<b>Agenda Section:</b>	Public Presentations/ Proclamations/Receipt of General Communications	<b>Originating Department:</b>	Police Department
<b>Resolution:</b>	N/A	<b>Prepared By:</b>	Kimberly Czapar, Crime Prevention Specialist
<b>Ordinance:</b>	N/A		
<b>Attachments:</b>	1	<b>Presented By:</b>	Mayor Jeffrey Lunde
<b>Item:</b>	Mayor's Proclamation of August 6, 2019 as National Night Out in Brooklyn Park		

## City Manager's Proposed Action:

The Mayor shall proclaim August 6, 2019 as the "National Night Out" celebration in Brooklyn Park by one of the following:

1. "I, Jeffrey Lunde, Mayor of the City of Brooklyn Park, Minnesota, do hereby proclaim August 6, 2019 as National Night Out in Brooklyn Park."

**OR**

2. By reading the proclamation.

## Overview:

The City has a long history of supporting National Night Out and has won numerous National Awards. This year's events will take place on two dates:

August 2	Movie in the Park at Central Park
August 6	Neighborhood parties citywide

**Primary Issues/Alternatives to Consider:** N/A

**Budgetary/Fiscal Issues:** N/A

## Attachments:

3B.5A PROCLAMATION

# **PROCLAMATION**

## **NATIONAL NIGHT OUT**

### **in the City of Brooklyn Park**

WHEREAS, the National Association of Town Watch (NATW) each year sponsors a unique, nationwide, crime, drug and violence prevention program on August 6, 2019 called "*National Night Out*"; and

WHEREAS, National Night Out provides a unique opportunity for residents of Brooklyn Park to join forces with thousands of other communities across the country in promoting cooperative, police-community partnerships for crime and drug prevention; and

WHEREAS, the Brooklyn Park residents play a vital role in assisting the Brooklyn Park Police Department in ensuring stable neighborhoods in Brooklyn Park and in celebrating National Night Out locally; and

WHEREAS, it is essential that ALL residents of Brooklyn Park be aware of the importance of crime prevention programs and the impact that their participation can have on connecting communities and reducing crime in Brooklyn Park; and

WHEREAS, police-community partnerships, neighborhood safety, awareness and cooperation are the heart of the National Night Out program; and

WHEREAS, this 2019 National Night Out celebrates police-community partnerships by making our community a better place, because *only by working together as a community can we truly "Give Crime, Drugs and Violence a Going Away Party."*

NOW, THEREFORE, I, MAYOR JEFFREY LUNDE, do hereby call upon ALL residents of Brooklyn Park to join Brooklyn Park's Police and Fire Departments, Brooklyn Park Crime Prevention Association, and the National Association of Town Watch in support of the "*37th Annual National Night Out*." Festivities begin on Friday, August 2, and go through Tuesday, August 6, 2019, with approximately 200 individual neighborhood block parties and our citywide movie in the park.

FURTHER, LET IT BE RESOLVED, THAT I, MAYOR JEFFREY LUNDE, do hereby proclaim August 6, 2019, as "*National Night Out*" in Brooklyn Park and support the Brooklyn Park Crime Prevention Association, neighborhood watch captains and all residents in their efforts to "*Make Brooklyn Park a thriving community inspiring pride where opportunities exist for all*" through their National Night Out events.

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Jeffrey Joneal Lunde, Mayor



5200 85th Avenue North  
Brooklyn Park, MN 55443

# City of Brooklyn Park Request for Council Action

<b>Agenda Item:</b>	3B.6	<b>Meeting Date:</b>	July 22, 2019
<b>Agenda Section:</b>	Public Presentations/ Proclamations/Receipt of General Communications	<b>Originating Department:</b>	Administration
<b>Resolution:</b>	N/A	<b>Prepared By:</b>	Marlene Kryder Program Assistant
<b>Ordinance:</b>	N/A		
<b>Attachments:</b>	N/A	<b>Presented By:</b>	Council Member Wynfred Russell
<b>Item:</b>	Presentation on International Making Cities Livable Conference		

## City Manager's Proposed Action:

Council Member Russell will present on the 56th International Making Cities Livable Conference (IMCL), A Healthy City for ALL.

## Overview:

In June 2019, Council Member Russell attended the conference in Portland, Oregon. Tonight, he will share information and highlights from the conference.

**Primary Issues/Alternatives to Consider:** N/A

**Budgetary/Fiscal Issues:** N/A

**Attachments:** N/A

# City of Brooklyn Park Request for Council Action

<b>Agenda Item:</b>	4.1	<b>Meeting Date:</b>	July 22, 2019
<b>Agenda Section:</b>	Consent	<b>Originating Department:</b>	Recreation and Parks
<b>Resolution:</b>	X	<b>Prepared By:</b>	Jody Yungers, Director of Recreation and Parks
<b>Ordinance:</b>	N/A		
<b>Attachments:</b>	3	<b>Presented By:</b>	Jody Yungers
<b>Item:</b>	Approve Professional Service Agreement with WSB for Design Development and Construction Bid Documents for River Park Redevelopment Plan		

## City Manager's Proposed Action:

MOTION \_\_\_\_\_, SECOND \_\_\_\_\_, TO WAIVE THE READING AND ADOPT RESOLUTION #2019-\_\_\_\_ APPROVING PROFESSIONAL SERVICE AGREEMENT WITH WSB CONSULTANTS FOR DESIGN DEVELOPMENT AND CONSTRUCTION BID DOCUMENTS FOR RIVER PARK REDEVELOPMENT PLAN.

## Overview:

On May 13, 2019, City Council approved the River Park Master Plan, which established a vision for the park and provided the direction and priorities for the future redevelopment of River Park. The Master Plan aligns with the community's goal to create a park that allows for increased connections to the natural world, while providing more opportunity to view and access the Mississippi River.

While the River Park Master Plan provides the guidance for the park improvements, further refinement of the park plan is necessary as part of the design development process. Due to the River Park's proximity to the Mississippi River, the need for additional community engagement and requirements to establish permits and plan review from state, regional and federal agencies, staff will continue to work with WSB Consultants, who help guide the River Park Master Plan process.

A significant part of the design development process will engage key stakeholder agency representatives from the Minnesota Department of Natural Resources (DNR), National Park Service (NPS), Watershed District, Three Rivers Park District and the Corp of Engineers in the review and design development and construction documents for the proposed redevelopment element of River Park.

## Budgetary/Fiscal Issues:

The WSB Consultant fee of \$288,088.08 and scope of work includes community engagement, agency plan review and permit applications, conducting a required archeological evaluation, professional design development planning, and development of construction bid documents. The agreement is an amendment to the WSB & Associates Agreement for Professional Service approved by City Council on June of 2017.

The River Park project is included in the City's adopted 2019-2023 Capital Improvement Plan (project #2011). The total amount shown in the CIP design development phase of the project (2019/2020) is \$313,000.

Additionally, a portion of the project will be funded by the following grants:

- NPS Technical Assistance Grant – Received in 2018 and continued for 2019
- NPS – Alternative Transportation Plan Capital Improvement Plan – Grant Application of \$362,000 – Pending Final Approval from DC, July 2019
- MN DNR – \$250,000 Outdoor Recreation Grant – Awarded July 2019

**Primary Issues/Alternatives to Consider:**

The Recreation and Parks Advisory Commission will continue to provide periodic review of the final design development plans and recommended shoreline change, riverfront restoration, paddle share and storm water drainage plans.

**Attachments:**

- 4.1A RESOLUTION
- 4.1B RIVER PARK MASTER PLAN CONCEPT PLAN
- 4.1C WSB LETTER FOR ESTIMATE FOR PROFESSIONAL SERVICE FEE

RESOLUTION #2019-

RESOLUTION TO APPROVE PROFESSIONAL SERVICE AGREEMENT WITH WSB CONSULTANTS  
FOR DESIGN DEVELOPMENT AND CONSTRUCTION BID DOCUMENTS FOR RIVER PARK  
REDEVELOPMENT PLAN

WHEREAS, the River Park Master Plan established a vision for the park and provided the direction and priorities for the future redevelopment of River Park; and

WHEREAS, the River Park Master Plan aligns with the community's goal to create a park that allows for increased connections to the natural world while providing more opportunity to view and access the Mississippi River; and

WHEREAS, further refinement of the park master plan is necessary to include the design development process; and

WHEREAS, a significant part of the design development process will engage key stakeholder agency representatives from the Minnesota Department of Natural Resources (DNR), National Park Service (NPS), Watershed District, Three Rivers Park District and the Corp of Engineers in the review and design development and construction documents for the proposed redevelopment element of River Park; and

WHEREAS, WSB Consultants assisted with the River Park Master Plan process and is familiar with the required permits and plan review process from state, regional and federal agencies; and

WHEREAS, the WSB Consultant fee of \$288,088.08 includes community engagement, agency plan review and permit applications, conducting a required archeological evaluation, professional design development planning, and development of construction bid documents; and

WHEREAS, the agreement is an amendment to the WSB & Associates Agreement for Professional Service approved by City Council on June of 2017.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brooklyn Park to approve Professional Service Agreement with WSB for Design Development and Construction Bid Documents for River Park Redevelopment Plan.



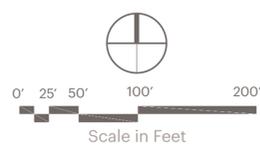
**KEY**

- ✳ Nature Play Nodes throughout park (4)
  - 🐟 Stone Fishing Platform Location (4)
  - Educational Signage Location (8)
  - - - Property Boundary
- Total Park Acreage: 42.65

## Recreation Site Plan | River Park

Brooklyn Park, Minnesota

March 27, 2019 | WSB Project number: 011887-000



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July 15, 2019

Ms. Jody Yungers  
Director of Recreation and Parks  
City of Brooklyn Park  
5600 85th Ave. N.  
Brooklyn Park, MN 55443

Re: Estimate of Professional Services Fee  
River Park Improvements –Construction Document and Bidding Services  
City of Brooklyn Park, MN

Dear Ms. Yungers:

WSB is pleased to present this proposal for professional services related to the River Park Improvements. The scope of services presented in this proposal are based on discussions with the City of Brooklyn Park, previously completed site master planning of the site by WSB, and our familiarity with the project area.

**PROJECT UNDERSTANDING:**

River Park will be renovated as per the Master Plan approved in 2019 (site plan attached) with minor modifications to be determined. The improvements include construction of a new restroom / storage building, additional picnic shelter, stormwater filtration / infiltration areas, shoreline restoration and stabilization, parking lot enhancements, trail connections, river overlook, native restoration areas, nature play nodes, fishing platforms, ADA access to the new facilities, and other improvements as shown in the master plan. The buildings will have detailing to match or complement the existing structures on the site. Design will be performed in 2019 with the desire to bid the project for construction starting in 2020.

We are proposing a team comprised of WSB, along with Blondo Consulting for Archeologic Survey, Hagen Christensen and McLwain Architects (HCM), Emanuelson Podas Consulting Engineers (EP) for Mechanical and Electrical Engineering and Paulson Clark Engineers (PCE) for Structural Engineering of the buildings.

Our design team has many years of project experience working together and all firms have leadership personnel dedicated to the project. This helps ensure that the City of Brooklyn Park is guaranteed a project that was overseen by experienced professionals.

**BASE SCOPE OF SERVICES**

WSB will provide final design and bidding services for this project based on the approved site plan. The level of implementation within this phase will be based on the total estimated construction costs listed in the Master Plan, approximately \$3.26 million. To complete the project, we propose the following scope of services:

**A. SCOPE OF SERVICES – DESIGN AND BIDDING:**

1. **Project Focus Meeting:** The general purpose of the focus meeting is to confirm key individuals and staff members who will be involved in the project or have information that will affect the project and provide a general review and

701 XENIA AVENUE S | SUITE 300 | MINNEAPOLIS, MN | 55416 | 763.541.4800 | WSBENG.COM

Ms. Jody Yungers  
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discussion about project needs and requests, as well as potential issues and concerns.

2. **Data Collection / Background Information:**

- a. Survey Services include:
  - i. Topographic Survey: Fieldwork, data collection and development of an accurate topographic basemap in AutoCAD (.dwg) format suitable for construction purposes. Topographic Survey will include Gopher State One Call for accurate utility locations, location of all existing park elements and a full tree inventory.
  - ii. Boundary Survey: Additional field work, computations and drawing to create full boundary survey for all parcels within River Park.
  
- b. Geotechnical services include:
  - i. Seven (7) flight auger borings in the proposed infiltration pond locations, 2 flight auger borings in the proposed pavement areas, and 5 standard penetration borings in the picnic shelter, restroom, and overlook areas. The borings will be extended to depths of 14.5 feet, with the exception of the pavement borings which will be extended to 8 feet below grade. Borings that are less than 15 feet in depth do not require grouting per Minnesota Department of Health regulation.
  - ii. WSB will stake and elevate the proposed bore hole locations with GPS from our surveying group. Prior to sending a drill rig to the site WSB will contact Gopher State One Call (GSOC) and have them request public underground utility owners mark and clear our proposed bore hole locations of their utilities. If there are private underground utilities that are not located by GSOC, they are the responsibility of the City of Brooklyn Park to mark.
  - iii. Samples retrieved during drilling will be returned to our laboratory where they will be reviewed, classified using the Unified Soil Classification System (USCS) and logged under the direction of a geotechnical engineer. Select samples will be set aside for laboratory testing including moisture content, #200 wash, and potentially organic content. WSB will also obtain 2 bulk samples for potential additional testing for infiltration rate estimations.
  - iv. Information gathered for this project will be used to prepare a geotechnical report. The report will summarize our findings and provide a discussion of subsurface soil and groundwater conditions encountered in our borings and how they may affect the proposed construction of foundations, slabs and pavements. The report will also provide recommendations for an allowable soil bearing pressure for footing design, along with estimates of ground water depths/elevations and settlement under the assumed structural loads, site grading, and a discussion of soils for use as structural fill and site fill. Estimated infiltration rates will be provided based on the soil classification and the recommendations of the Minnesota Stormwater Manual.
  - v. Site drilling may cause rutting and damage to landscape areas, or cracks in curbs or trails that are crossed by the drilling equipment. These potential site damages cannot be quantified at the time of proposal. WSB understands that the City of Brooklyn Park will be responsible for any site repair from normal drilling activities.

- vi. This geotechnical proposal is presented for engineering services to determine the structural properties of the soil at the specified site. It does not cover an environmental assessment of the site, or environmental testing of the soil or groundwater.
- c. Phase 1 Environmental Site Assessment to identify any potential environmental issues associated with previous fill or historical structures on the site. Based on a quick a quick review of the MPCA WIMN website and historical aerials, there are not any MPCA sites within 1,000 feet of the park. However, the park was historically developed with multiple buildings, and included a number of wetland-type areas visible in historical aerials. Based on the current topography at the site, the filled wetlands may suggest the use of fill soils at one time within the park.
- d. Archeologic Survey: Review of cultural resource studies may be done at the local level or at the state level by the State Historic Preservation Office (SHPO) and the Office of the State Archaeologist (OSA), or in the case of tribal involvement (for example within reservation boundaries), a Tribal Historic Preservation Office (THPO). SHPO, THPO, and OSA require that surveys be conducted by a qualified professional who meets the Secretary of the Interior's qualifications as outlined in 36CFR800, and also outlines standards and guidelines for conducting work in the state.

Blondo Consulting will meet or exceed these standards, requirements and guidelines for this project. We have assembled a qualified team to ensure project success. All three principal investigators hold current Minnesota State Licensure. Mr. Steven Blondo, owner of Blondo Consulting, holds a Master's Degree in Anthropology (Cultural Heritage Studies) from the University of Minnesota. He meets Secretary of the Interior's Qualifications Standards and has been assisting clients with compliance related Cultural Resource work for nearly 20 years. He has established outstanding relationships with the Minnesota SHPO, OSA, and many tribal offices. He has completed small to large and complex projects in the state and coordinated client compliance repeatedly. He has conducted numerous archaeological investigations related to prehistoric and historic period sites and evaluated history architectural properties across the state.

Blondo Consulting will complete background research prior to a field visit. Background research will take place at the Minnesota Historical Society, SHPO, Office of the State Archaeologist, online, and at local historical societies. Detailed background research will be utilized to develop a site-specific context and understanding of the potential for intact archaeological resources in the vicinity of the project area. Coordination with SHPO and/or a field visit will be completed to determine appropriate field survey approach.

Following completion of background research, we will complete a Phase I Archaeological Survey of the proposed project area. Fieldwork will be conducted in accordance with SHPO requirements. Where ground visibility is good (greater than 25 percent) pedestrian survey could be conducted. Ground visibility of less than 25 percent on average would necessitate the use of shovel testing to examine subsurface soils and identification of archaeological sites within the project area. It is anticipated that field

conditions will allow for pedestrian survey supplemented with intuitive shovel testing. Shovel testing is recommended for areas within previously recorded and reported archaeological sites.

Completion of a compliance report will be issued at the conclusion of the survey. The report will include a discussion of historical context, research and field results, as well as potential next steps for the project. If required, management recommendations for compliance, clearance, or additional work if required (for example - assessment of project effects), may also be included. This report will meet State Historical Preservation Office (SHPO) standards for Section 106 compliance (a standard for all archaeological work completed in the state).

Additional tasks that may be required after the assessment would include: (1) Determination of Eligibility and Effects Study (Phase II Evaluation), outlining the National Register of Historic Places Eligibility of recorded and identified sites in the project area and potential effects the project may have on those resources; (2) Coordination of project design to avoid or minimize effects to NRHP eligible properties; and (3) Mitigation of adverse effects (including Phase III Data Recovery). Additional tasks required will follow completion of Cultural Resources Assessment and be detailed as appropriate in a separate Scope of Work, which would act as an extension of the original contract.

- e. Wetland delineation: A Level 2 (onsite) wetland investigation will be completed within the designated project limits. All wetlands and ditches will be delineated and characterized. Prior to the site visit, WSB will review the Hennepin County Soil Survey, MnDNR Public Waters map, MnDNR National Wetland Inventory, FEMA flood zone map, and contours. The wetland delineation will be completed in conformance with the US Army Corps of Engineers (USACE) Wetlands Delineation Manual (US Army Corps of Engineers, 1987) and the Midwest Regional Supplement. The wetland boundary will be surveyed using a sub-meter accuracy GPS unit. Fluorescent pink pin flags will be used to temporarily mark the boundary of any wetlands and roadside ditches, until approval is received. Assuming wetlands are identified within the site, the information will be compiled into a wetland delineation report. This report will be submitted to the Local Government Unit (LGU), and USACE for their review and approval. The wetland delineation report will include a figure depicting the locations of all delineated wetlands, as well as characterization & classification of wetland types. Wetland boundary and type concurrence will be requested from the LGU. The USACE will also provide concurrence of any identified wetland boundaries. A final, approved wetland boundary CAD file will be delivered to the Client following LGU and USACE approval, if requested. This task requires a return trip to the site to meet with the Watershed to verify the delineated wetland boundaries together

- 3. **Preliminary Design:** Based on the 2019 Master plan, the Preliminary Design task will identify all the items included within the original plan, that will be included in the project moving forward. Amenity sizing and relationships will be confirmed, and integration of other park design elements will take place (infiltration area feasibility plan).

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Restroom and storage building PreDesign will include confirming desired access layout, anticipated occupant count and amenities such as grills, site walls, countertops to facilitate picnics, plumbing fixtures, storage need, etc. and concept designing of the facilities to deal with potential river flooding and season use. Develop the building design sketches that identify the elements to ensure that designs meet City needs. This is a critical step to getting this project off in the right direction given a limited time frame for design and bidding.

4. **Design Development:** Shall include the preparation of written text, plans, photos, product info, and other drawings necessary to describe the design, materials, colors, textures in sufficient detail for the City to envision the appearance and function of the improvements.
  - a. This includes using the appropriate design standards for the listed facilities and preparing design development drawings. The drawings include basic site layout, landscaping, grading, removals plans, site utility plans, site lighting plans, site building plans and details as required.
  - b. Outline specifications, including general and technical sections, will be prepared.
  - c. An estimate of the cost to construct these improvements will be refined based on these documents. From this estimate the City shall determine which of the improvements shall be included in the final design.
  
5. **Construction Documents:** Once the design options are fully explored and selected, WSB will prepare final Construction Documents. These documents shall include plans, details, and specifications in sufficient detail for the City to pursue competitive bids for the construction of the improvements. This task will include:
  - a. Construction Plans including:
    - i. Title Sheet
    - ii. Site Removals Plan
    - iii. Site Layout Plan
    - iv. Site Grading Plan
      - Erosion control and site SWPPP plans
      - Onsite soils are assumed to be free of hazardous materials.
      - Spot elevations for key finished grade elements
      - ADA grading design of trails, sidewalks, and other site facilities as appropriate for the project.
    - v. Pavement Designs and Typical Details
    - vi. Structural Design: Structural design of river overlook and pedestrian bridge at south end of the site. Structure types to be determined through the design development process. Structural design will address any needed foundation, retaining or elevated structure elements for the overlook, as well as full design for the pedestrian bridge. Assumed span of pedestrian bridge is 10' or less, to alleviate formal MnDOT review and annual inspection requirements.
    - vii. Storm Sewer and Drainage Plans and details: Analysis and design of the stormwater drainage and conveyance system consistent with stormwater management requirements.
      - Developing existing and proposed drainage area maps and model for park improvements and sizing rate control and storm structures.

- BMP design as required to meet City and West Mississippi River WMC permit requirements for all reconstructed impervious from the Parking Lots.
  - Final design regional stormwater ponding basin off 81<sup>st</sup> Ave., which includes West Mississippi River WMC Permit submission for stormwater management, erosion control and working in the floodplain with one round of permit comment responses.
- viii. Building Plans, including structural, mechanical and electrical components.
  - ix. Trail Lighting Plan
  - x. Miscellaneous Site Construction Details
- b. Prepare Technical Specifications
  - c. Prepare Final Cost Estimate

**Permitting:** WSB will work with permitting agencies to identify the permitting review and approval process, including, but not limited to the following:

- d. Completion and submittal of the NPDES Phase II stormwater permit at 90% plan completion. Assumes erosion control plan, SWPPP, and required erosion and sediment control details.
- e. MN Wetland Conservation Act and US Army Corps of Engineers Section 404 Permits (Joint Application): If the Aquatic Resource assessment concludes wetlands or other aquatic resources exist, the approved delineated boundaries will be incorporated into project design for wetland impact avoidance and minimization considerations. This includes impacts to the Mississippi River edge. If impacts are required, WSB will prepare the WCA and Section 404 permits application (Joint Application), for a wetland replacement plan decision. WSB will incorporate the avoidance sequencing discussion and assumes wetland replacement will be via an approved wetland bank, if required. WSB will coordinate the approvals necessary to facilitate the purchase of wetland replacement credits.
- f. West Mississippi Watershed: Work within the West Mississippi Watershed will require a permit for wetland or river bank alterations. WSB will review the Watershed rules to ensure compliance with the Watershed rules and apply for a permit from the Watershed.
- g. MnDNR Permitting and Reporting System: The Site potentially contains work within the Mississippi River, which will require a MnDNR MPARS permit if impacts to the River are proposed.
- h. Coast Guard: If work is proposed within the navigation channel of the Mississippi River a Coast Guard permit may be required. WSB will be in contact with the Coast Guard as part of the Section 10 waters review to determine if a permit will be needed. If a permit is needed, WSB will fill out and supply all necessary information for a Permit.
- i. Note: Coordination with agencies other than those listed above may require additional work or change in project scope. This work will be completed on an hourly basis to be billed in accordance with WSB's general services contract with the City of Brooklyn Park. All permit fees will be considered reimbursable expenses billed in addition to fees.

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6. **Bidding Assistance** – It is understood that the project will be bid as a single package to be constructed in 2020. WSB will work in partnership with the City and its consultant, Simplar, in preparation and development of a bid document that aligns with best value standards. WSB will provide services for bidding assistance associated with the bid package, including the following:
- a. Advertisement for bids
  - b. Coordinate online plan set availability to Contractors
  - c. Receive questions from Prospective Bidders and provide responses
  - d. Issue addenda as necessary
  - e. Attend the bid opening
  - f. Prepare tabulation of bids
  - g. Prepare letter of recommendation for contract award

If the project is bid in multiple packages, additional work or change in project scope will be completed on an hourly basis to be billed in accordance with WSB's general services contract with the City of Brooklyn Park.

7. **Deliverables:**
- a. One complete paper and digital set of preliminary design materials, design development plans and graphics, construction drawings, specifications and final estimate of probable construction costs at 60%, 95%, and 100% completion.
  - b. Addenda during bidding
  - c. Bid tabulation
  - d. Letter of recommendation to award contract
8. **Anticipated Meetings to be held in Brooklyn Park:**
- a. Project Focus Meeting (Kick-off)
  - b. One preliminary design meeting
  - c. Two Construction Document review meetings (60% and 95%)
  - d. Two stakeholder meetings with permitting authorities and other stakeholders
  - e. Two public engagement meetings at Preliminary design and Design Development stages
  - f. Two RPAC meeting presentations
  - g. One Council work session and one Council meeting for final approval

**B. ADDITIONAL SERVICES**

Any additional work or change in project scope will be completed on an hourly basis to be billed in accordance with WSB's master services contract with the City of Brooklyn Park. No additional services will be completed without prior approval from the City of Brooklyn Park.

**C. CONDITIONS AND EXCLUSIONS**

1. We will provide all of the professional design services, required to complete the plans and specifications as required for bidding the improvements for this project except the following:
  - a. Hazardous waste engineering
  - b. Ecological design services
  - c. Irrigation Design
  - d. Construction Survey Services (staking and layout of proposed elements)
  - e. Full time Construction Inspection Services

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WSB can add these items to our scope at additional fee if they become required.

2. Any additional work or change in project scope will be completed on an hourly basis to be billed in accordance with WSB's general services contract with the City of Brooklyn Park.
3. City of Brooklyn Park may terminate project with written notice but shall be responsible for fees incurred to date.

**D. PROJECT MANAGEMENT:**

1. Jeff Feulner, Senior Landscape Architect will act as the main project manager for this project, with support by other staff. The City reserves the right to review/reject alternate project manager if workload requires an alternate staff member to take over project management duties.

**E. PROPOSED COST:**

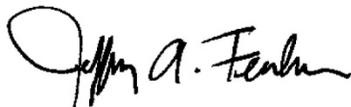
1. **Scope of Services– Final Design and Bidding:** WSB and their identified team of subconsultants will provide the services as outlined in Scope of Services Section "A" above for an hourly not-to-exceed fee of \$288,088.08.

\*Total fee includes not-to-exceed cost of \$25,000 for Archeological fieldwork on site. Completion of background research, coordination with SHPO and initial field visit will assist in determining a level of survey that is appropriate to meet grant requirements. Upon determination of final approach, the cost estimate for Archaeological fieldwork will be revised, with the anticipated total cost being within a range of \$17,000 - \$25,000.

The proposed scope and fee presented herein represents our complete understanding of the project based on available information. If you have any questions or need additional information, please feel free to contact me at 763-287-8527. Once again, we appreciate the opportunity to submit this proposal and look forward to working with you and your staff.

Sincerely,

WSB



Jeff Feulner, PLA  
Associate, Senior Landscape Architect



Jason Amberg, PLA  
Principal, Group Manager

# City of Brooklyn Park Request for Council Action

<b>Agenda Item:</b>	4.2	<b>Meeting Date:</b>	July 22, 2019
<b>Agenda Section:</b>	Consent	<b>Originating Department:</b>	Community Development Rental and Business Licensing
<b>Resolution:</b>	N/A	<b>Prepared By:</b>	Megan Bookey, Program Assistant III
<b>Ordinance:</b>	N/A		
<b>Attachments:</b>	N/A	<b>Presented By:</b>	Keith Jullie, Rental and Business Licensing Manager
<b>Item:</b>	Approve a Temporary On-Sale Liquor License for the Brooklyn Park Lions Beer Tent at Hy-Vee Car Show and Pork Roast to be held August 9, 2019 at 9409 Zane Avenue North		

## City Manager's Proposed Action:

MOTION \_\_\_\_\_, SECOND \_\_\_\_\_, TO APPROVE A TEMPORARY ON-SALE LIQUOR LICENSE FOR THE BROOKLYN PARK LIONS BEER TENT AT HY-VEE CAR SHOW AND PORK ROAST TO BE HELD AUGUST 9, 2019 AT 9409 ZANE AVENUE NORTH.

## Overview:

The Community Development Department approved the application on July 2, 2019 and the Police Department has completed their investigation of the applicant. There are no known code violations at the property and staff finds no reason that would preclude the issuance of this Temporary On-Sale Liquor license. Their reports are on file in the Licensing Division and are available upon request.

The license must be approved by the State of Minnesota Alcohol and Gambling Enforcement Division once the City of Brooklyn Park has approved the license.

**Primary Issues/Alternatives to Consider:** N/A

**Budgetary/Fiscal Issues:** N/A

**Attachments:** N/A

# City of Brooklyn Park Request for Council Action

<b>Agenda Item:</b>	4.3	<b>Meeting Date:</b>	July 22, 2019
<b>Agenda Section:</b>	Consent	<b>Originating Department:</b>	Community Development Rental and Business Licensing
<b>Resolution:</b>	N/A	<b>Prepared By:</b>	Megan Bookey, Program Assistant III
<b>Ordinance:</b>	N/A		
<b>Attachments:</b>	N/A	<b>Presented By:</b>	Keith Jullie, Rental and Business Licensing Manager
<b>Item:</b>	Approve a Temporary On-Sale Liquor License for the Church of St. Vincent de Paul for their Harvest Fest to be held September 15, 2019 at 9100 93 <sup>rd</sup> Avenue North		

## City Manager's Proposed Action:

MOTION \_\_\_\_\_, SECOND \_\_\_\_\_, TO APPROVE A TEMPORARY ON-SALE LIQUOR LICENSE FOR THE CHURCH OF ST. VINCENT DE PAUL FOR THEIR HARVEST FEST TO BE HELD SEPTEMBER 15, 2019 AT 9100 93<sup>RD</sup> AVENUE NORTH.

## Overview:

The Community Development Department approved the application on June 26, 2019 and the Police Department has completed their investigation of the applicant. There are no known code violations at the property and staff finds no reason that would preclude the issuance of this Temporary On-Sale Liquor license. Their reports are on file in the Licensing Division and are available upon request.

The license must be approved by the State of Minnesota Alcohol and Gambling Enforcement Division once the City of Brooklyn Park has approved the license.

**Primary Issues/Alternatives to Consider:** N/A

**Budgetary/Fiscal Issues:** N/A

**Attachments:** N/A

# City of Brooklyn Park Request for Council Action

<b>Agenda Item:</b>	4.4	<b>Meeting Date:</b>	July 22, 2019
<b>Agenda Section:</b>	Consent	<b>Originating Department:</b>	Administration
<b>Resolution:</b>	N/A	<b>Prepared By:</b>	Devin Montero, City Clerk
<b>Ordinance:</b>	N/A		
<b>Attachments:</b>	4	<b>Presented By:</b>	Devin Montero
<b>Item:</b>	Approval of Minutes		

## City Manager's Proposed Action:

MOTION \_\_\_\_\_, SECOND \_\_\_\_\_, TO APPROVE THE MINUTES OF THE BROOKLYN PARK CITY COUNCIL MEETING OF MAY 29, 2018, AS PRESENTED BY THE CITY CLERK.

MOTION \_\_\_\_\_, SECOND \_\_\_\_\_, TO APPROVE THE MINUTES OF THE BROOKLYN PARK CITY COUNCIL MEETING OF OCTOBER 22, 2018, AS PRESENTED BY THE CITY CLERK.

MOTION \_\_\_\_\_, SECOND \_\_\_\_\_, TO APPROVE THE MINUTES OF THE BROOKLYN PARK CITY COUNCIL MEETING OF JUNE 24, 2019, AS PRESENTED BY THE CITY CLERK.

MOTION \_\_\_\_\_, SECOND \_\_\_\_\_, TO APPROVE THE MINUTES OF THE BROOKLYN PARK CITY COUNCIL MEETING OF JULY 8, 2019, AS PRESENTED BY THE CITY CLERK.

**Overview:** N/A

**Primary Issues/Alternatives to Consider:** N/A

**Budgetary/Fiscal Issues:** N/A

## Attachments:

- 4.4A CITY COUNCIL MEETING MINUTES, MAY 29, 2018
- 4.4B CITY COUNCIL MEETING MINUTES, OCTOBER 22, 2018
- 4.4C CITY COUNCIL MEETING MINUTES, JUNE 24, 2019
- 4.4D CITY COUNCIL MEETING MINUTES, JULY 8, 2019

REGULAR BROOKLYN PARK CITY COUNCIL MEETING

Tuesday, May 29, 2018  
7:00 p.m.

Brooklyn Park Council Chambers  
5200 85th Avenue North

CALL TO ORDER – Mayor Jeffrey Lunde

PRESENT: Mayor Jeffrey Lunde; Council Members Rich Gates, Susan Pha, Terry Parks, Bob Mata and Lisa Jacobson; City Manager Jay Stroebel; City Attorney Jim Thomson; Community Development Director Kim Berggren; Deputy Police Chief Mark Bruley and City Clerk Devin Montero.

ABSENT: Mark Mata (excused)

Mayor Lunde opened the meeting with the Pledge of Allegiance.

2A RESPONSE TO PRIOR PUBLIC COMMENT – None.

2B PUBLIC COMMENT

1. Kraig Karasti, 6025 92<sup>nd</sup> Avenue N. Concerned on the effectiveness of the code enforcement program on code violations.

3A. MOTION GATES, SECOND JACOBSON TO APPROVE THE AGENDA AS SUBMITTED BY THE CITY CLERK WITH MOVING ITEM 7.2 AHEAD OF ITEM 7.1. THE MOTION PASSED UNANIMOUSLY.

3B. PUBLIC PRESENTATIONS/PROCLAMATIONS/RECEIPT OF GENERAL COMMUNICATONS

3B1 TwinWest Chamber of Commerce Presentation.

Shannon Full, President/CEO, TwinWest Chamber of Commerce gave an update on its activities with the local community, schools and local government.

4.0 MOTION GATES, SECOND PARKS TO APPROVE THE FOLLOWING ADMINISTRATIVE CONSENT ITEM:

4.1 TO WAIVE THE READING AND ADOPT RESOLUTION #2018-82 TO ACCEPT THE 2017 DEER HUNT RESULTS, AUTHORIZE THE CONTINUATION OF THE 2018 DEER MANAGEMENT PROGRAM, AND AUTHORIZE THE DIRECTOR OF RECREATION AND PARKS TO ENTER INTO AN AGREEMENT WITH THE METRO BOWHUNTERS RESOURCE BASE TO CONDUCT THE 2018 HUNT.

4.2 TO APPROVE THE MINUTES OF THE CITY COUNCIL WORK SESSION OF OCTOBER 2, 2017, AS PRESENTED BY THE CITY CLERK.

4.2 TO APPROVE THE MINUTES OF THE CITY COUNCIL RETREAT OF JANUARY 29, 2018, AS PRESENTED BY THE CITY CLERK.

4.3 TO WAIVE THE READING AND ADOPT RESOLUTION #2018-83 TO AWARD THE

CONTRACT FOR ARENA #1 BLEACHER AND WALKWAY EPOXY FLOOR COATING TO SWEDEBRO.

4.4 TO WAIVE THE READING AND ADOPT RESOLUTION #2018-88 CHANGING A POLLING PLACE FOR PRECINCT WEST-1R IN THE CITY OF BROOKLYN PARK FOR THE PRIMARY ELECTION ON AUGUST 14, 2018, AND THE GENERAL ELECTION ON NOVEMBER 6, 2018.

4.5 TO WAIVE THE READING AND ADOPT RESOLUTION #2018-84 ACCEPTING BIDS AND AWARD CONTRACT TO AE2S CONSTRUCTION LLC FOR LIGHTING IMPROVEMENTS AT BOONE RESERVOIR.

4.6 TO WAIVE THE READING AND ADOPT RESOLUTION #2014-85 TO AUTHORIZE PAYMENT FOR REPLACEMENT OF ELECTRIC MOTOR FOR MUNICIPAL WELL PUMP #16 TO KEY'S WELL DRILLING, INC.

THE MOTION PASSED UNANIMOUSLY.

6.1 Planning Director Cindy Sherman briefed the Council on the Amendment to Conditional Use Permit #18-109 to Increase the Size of the Stone Mountain Center Multi-Tenant Retail Building to 9,352 Square Feet at 9801 Xenia Avenue North.

6.1 MOTION B. MATA, SECOND PARKS TO WAIVE THE READING AND ADOPT RESOLUTION #2018-86 APPROVING AN AMENDMENT TO THE CONDITIONAL USE PERMIT TO INCREASE THE STONE MOUNTAIN CENTER RETAIL BUILDING AREA TO 9,352 SQUARE FEET AT 9801 XENIA AVENUE NORTH. THE MOTION PASSED UNANIMOUSLY.

6.2 Planning Director Cindy Sherman briefed the Council on the Conditional Use Permit #18-106 for Redevelopment of Existing Public Storage Site including Demolition and the Construction of a Three-Story Climate-Controlled Building at 8124 Lakeland Avenue North.

6.2 MOTION LUNDE, SECOND JACOBSON TO WAIVE THE READING AND ADOPT RESOLUTION #2018-87 APPROVING AN AMENDMENT TO CONDITIONAL USE PERMIT FOR A SELF-SERVICE STORAGE FACILITY AT 8124 LAKELAND AVENUE NORTH. THE MOTION PASSED UNANIMOUSLY.

6.3 Planning Director Cindy Sherman briefed the Council on the Conditional Use Permit for a Sixteen Bed Care Center at 6900 78th Avenue North.

The following individuals addressed the Council:

1. Luke Wendlandt, representing Northstar Behavioral Health, applicant. Gave a history and background.
2. Ron Kopp, 7830 Idaho Lane. Concerns with proposed project in the neighborhood and should be in a different location in the city.
3. Heidi Britt, 7924 Brooklyn Boulevard. Center Director, Kinder Care Learning Center. Concerns of safety in the neighborhood of the proposed facility. To deny CUP.
4. Chris Edrington, 659 Selby Ave. St. Paul. In support of the project.

5. Thaoth Phan, 7571 Louisiana Ave. In support of the project.

Council Member B. Mata stated he went to the proposed area today, looked at the neighbors' backyards, the access in and out of there and drove around. He stated he talked to some of the neighbors and asked about their concerns. He stated their fear was about that facility going in there because there were three in-ground pools and a person with a drug addiction, even though they were trying to be clean and sober, could slip and could decide that suicide was the way to go and use someone's pool to do it. He stated the city had Prairie Care and maybe could have a place in there to do their work. He stated if the applicant wanted to have that facility there, they needed to convince the residents that it would be a safe and economic place for them. He stated he was not going to support it because of the people he talked to today. He stated if it came up in a different location, he would change his view on it, but where it was right now, the residents in that area were saying they did not want it there. He stated the applicant needed to convince them to change their minds before he would change his mind.

Council Member Jacobson stated she wanted to call attention to an organization that had existed in the community for 30 years called Treehouse at 7500 Brunswick Avenue. It was within a neighborhood. She stated the toughest of youth who lived in the community went there Tuesday and Thursday nights and those kids were on gangs, drug addicts, alcoholics, suicidal and cutting on themselves and were very violent. She stated they sought out Treehouse as a place of refuge and a place to get help and the police had never once been called to that facility by any of the neighbors. She stated she ran a program for homeless youth and had neighbors and they didn't know they were there. She stated that after doing research on other facilities and seeing how they ran a tight ship meant a lot to her and understood the neighbor's fear of the unknown. She stated that one of their staff made it clear it was a program she cared about and wanted to see the success of their clients. She stated that after hearing testimony and doing all the research, while she understood the thoughts of the couple of neighbors, would be in support of the project.

Council Member Pha stated she was disappointed that at the Planning Commission meeting there were a lot of residents and usually when a decision went the opposite of what they were hoping it would, they didn't show up at Council meetings. She stated the decision was not definite at the Planning Commission and the Council was where the decisions were made. She stated if there were still concerns, they should come back to the meeting and express those concerns, otherwise they were not going to hear everyone. She stated that opening a facility like it and across the twin cities supported the treatment work they did and were doing in other communities. She stated that opioid was an epidemic all over the country, the state and the city. She stated that having a facility in the city would be good but didn't think the proposed location was an appropriate location for an inpatient treatment facility. She stated it was too close to residential homes. Outpatient, yes, but the inpatient operated 24 hours a day, 7 days a week, 365 days a year and didn't think it was appropriate for that location. She thought it would have an adverse effect and alter the character of the surrounding areas and the residential neighborhood.

She stated she could not vote for it because she didn't think it was a good fit and welcomed Mr. Wendlandt to talk with her and staff to identify other possible locations in the city that would be a better fit for their business. She stated she saw they had other facilities in the state that were operating well also saw those sites were away from residential homes, at least a block or two

away with business and commercial as a buffer and had more privacy. She stated with the site being proposed tonight, they were right next to residential homes, no buffer and no other commercial space. She stated she couldn't see it was an appropriate site for their inpatient facility and wouldn't be supporting it.

Council Member Parks stated he had conversations and emails with Mr. Kopp for a while about his concerns and drove to the area and walked around the proposed area and talked to two other residents about their concerns. He stated he took into account the petition that was signed, and based on the testimony he heard, the proximity to the homes and the daycare and based on the petition, he would be a no vote tonight. He stated he welcomed them to the community but not there.

#### 6.3 MOTION PHA, SECOND B. MATA TO DENY A CONDITIONAL USE PERMIT FOR A SIXTEEN BED CARE CENTER LOCATED AT 6900 AVENUE NORTH.

City Attorney Thomson stated that if the majority of Council felt that the application should be denied, the appropriate motion should be to direct staff to come back with a resolution at the next Council meeting setting forth the reasons for the denial. He stated currently in their packet, there wasn't a resolution for denial, there was a resolution for approval based on the Planning Commission's recommendation.

#### 6.3 MOTION PHA, SECOND B. MATA TO DIRECT STAFF TO GO BACK AND BRING BACK TO COUNCIL A RESOLUTION FOR DENIAL BASED ON NOT MEETING THE CONDITIONAL USE PERMIT THAT'S NEEDED TO OPERATE THE FACILITY AT 6900 78<sup>TH</sup> AVENUE NORTH.

Mayor Lunde stated he 100% supported the "what" but it was the "where" for him and would love to find the opportunity for the "where" in the community. He thought the buffer did matter and thought about Prairie Care. He stated it was in a commercial district and was away from things people were worried about. He stated he would love to have staff to work with the applicant to find a place because the city needed it and was just the "where" part that was the concern. He stated it would be right in someone's back yard and if he had a back yard and someone wanted to put it there, he wouldn't have to leave the house to hear the activities. He stated he was going to vote to bring back the resolution for denial and would love to have a chance to find a place that worked. He stated he heard other Council Members say tonight, it was nothing about the "what" they were trying to do, it was about the "where" and that did matter when they were talking about the residents. He stated that was the job they were supposed to undertake on where things should go and where they fit. He thought the Planning Commission did exactly what they did and ruled on the technicalities of it. He stated there were the votes to sustain the motion and he would like a second chance with the applicant to find a place because he wanted them to do their work. He stated he wanted to find a place everyone could agree with the applicant and the community agreed too.

Council Member Gates stated he would support it. He stated he would like people who lived in neighborhoods with group homes to tell him there was a problem with them. He stated he lived next to a group home where they could walk out the door anytime they wanted. There were two by a daycare place within a block and would never know they were there. He stated that one of them allowed people to come in and out all day long and had never been a problem and the people were super friendly. He stated the one proposed tonight was going to be in house and

the people would be much supervised. He stated he understood the “not in my back yard,” but something had to go in somewhere in the community whether they liked it or not. He stated he understood the pool in the back yards issues and someone could easily jump a fence and go into a pool and didn’t see it happening. He stated the proposed facility, people who ran them had not had problems. He stated the Council needed to do what was right legally and didn’t know what they could stand on to say no. It was zoned for what that use was and was sad it was not going to be there because the city needed it. He stated they also put a homeless shelter right across a neighborhood and Valhalla Place was right across the street from an entire neighborhood and besides all the cars in and out of that all day long there were no major issues there. He stated the proposed project would have less because people who were in house were not going to be driving in and out all day long besides the workers and people visiting.

Mayor Lunde stated in order for the Council to deny it they had to have a motion to deny it and didn’t have one tonight. He stated the motion was to direct staff to bring back a motion to deny it at the next Council meeting. He asked for a roll call vote.

6.3 THE MOTION PASSED ON A ROLL CALL VOTE AS FOLLOWS: YES – PARKS, PHA, B. MATA, LUNDE; NO – JACOBSON, GATES.

6.4 Planning Director Cindy Sherman briefed the Council on the Comprehensive Plan.

6.4 MOTION JACOBSON, SECOND GATES TO DIRECT STAFF TO DISTRIBUTE THE COMPREHENSIVE PLAN TO ADJACENT COMMUNITIES, HENNEPIN COUNTY, ANOKA COUNTY, SCHOOL DISTRICTS AND THE METROPOLITAN COUNCIL FOR REVIEW AND COMMENT. THE MOTION PASSED UNANIMOUSLY.

7.2 Rental and Business License Manager Keith Jullie briefed the Council on the Tobacco Sales License for Bill’s Market Corp. dba Speedy Market located at 4610 85th Avenue North.

7.2 MOTION LUNDE, SECOND B. MATA TO APPROVE A TOBACCO SALES LICENSE FOR BILL’S MARKET CORP. DBA SPEEDY MARKET LOCATED AT 4610 85TH AVENUE NORTH. THE MOTION PASSED. (5 TO 1) GATES VOTED NO.

7.1 City Engineer Jesse Struve briefed the Council on the Street Parking and Pedestrian Facilities Along 65th Avenue North and Welcome Avenue North.

7.1 MOTION LUNDE, SECOND GATES TO DIRECT STAFF TO INSTALL “NO PARKING 7 A.M.-7 P.M. MONDAY-FRIDAY” SIGNS ALONG THE WEST SIDE OF WELCOME AVENUE NORTH BETWEEN 63RD AVENUE NORTH AND 65TH AVENUE NORTH. THE MOTION PASSED UNANIMOUSLY.

7.1 MOTION LUNDE, SECOND PARKS TO DIRECT STAFF TO PREPARE PRELIMINARY PLANS AND A COST ESTIMATE FOR A TRAIL ON THE NORTH SIDE OF 65TH AVENUE NORTH FROM ZANE AVENUE NORTH TO WELCOME AVENUE NORTH.

Council Member Bob Mata made a friendly amendment to the motion to have staff also check on the costs between a trail and/or sidewalk.

The friendly amendment to the motion was accepted by Mayor Lunde and Council Member Parks.

#### 7.1 THE VOTE ON THE AMENDED MOTION PASSED UNANIMOUSLY.

8.1 Recreation and Parks Director Jody Yungers stated that Ms. Megan Johnson would like to address the Council before her presentation.

1. Megan Johnson, parent representative, New Hope, Crystal and Plymouth (NHCP) swim club. She stated they had members from Maple Grove, Osseo, Brooklyn Park, New Hope, Crystal and Plymouth. She stated the facilities themselves did not bid to host meets. She stated there were State meets held in Rochester and at the University of Minnesota and two meets held annually in the course of 70 meets a year. She stated the swim clubs, Great Wolf and NHCP let Minnesota Swim knew when they would like to host a meet and was their responsibility to find a facility that would allow them to rent their facility. She stated that 50-meter pools were rare in Minnesota and they had a long tradition of swim and diving in the community. She stated the University of Minnesota did not want to rent to competitive clubs and they would like to have a facility like the one Brooklyn Park would hopefully build to continue the development of swimmers before they got to the collegiate level. She stated right now they rented pools from Northview Junior High and Brooklyn Junior High and were already in the community. She stated if the city built a pool with a 50-meter option they would continue to rent the space and was a guarantee and was 12 months a year and not limited.

At 8:38 p.m. City Attorney Thomson departed.

8.1 Recreation and Parks Director Jody Yungers briefed the Council on the Aquatic Feasibility Study. She stated they would present the outcomes and findings of the feasibility study. She gave a background of activities over the last 14 months related to the park system plan. She stated the Council gave direction in January to move forward to do an aquatics feasibility study. She stated the aquatics facility was in the top three priorities the community identified they wanted to see in the community. She stated the Council action was to put out an RFP for an aquatics feasibility study and the scope of the study was: develop preliminary program and facility elements; develop multiple facility concept plans for two option approaches; family aquatics center and other recreation facility improvements to existing CAC; free standing aquatic facility within the city in partnership with a third party; conduct a market feasibility, financial analysis; and develop recommendations for operational/management/and or partnership structures.

She introduced Mark Wentzell, 292 Design Group and Darinn Barr, B\*K Consultants, and Mr. Wentzell briefed the Council on the highlights of the study. He presented six options:

- Option 1 – Family Aquatics at the Community Activity Center
- Option 2 – Family Aquatics/Gym/Fitness at the Community Activity Center
- Option 3 – Family Aquatics/Gym/Fitness/50 Meter Pool at the Community Activity Center
- Option 4 – Family Aquatics/50 Meter Pool at a new site
- Option 5 – Gym/Fitness at the Community Activity Center
- Option 6 – 50 Meter/Lesson Pool/Therapy Pool at a new site

Mayor Lunde asked if it was possible to take Option 3 without building a 50-meter pool and leave all of the infrastructure that if they could get bonding money or get grants to add that later. Or make sure what was built that it would be an add-on and not a complete revamp of everything.

Mr. Wentzell stated that was almost essentially what they did when they developed the plan. He stated it could be done that way and there was some cost to doing that but it was a straight forward thing to do.

Mr. Wentzell introduced Darren Barr, B\*K Consultants, and he briefed the Council on the operational plans. He briefed on the following: operation data; primary/secondary regions; demographics; median age; households; income costs of living; budget expenditures/entertainment; participation percentage; top five activities on chart; swimming frequency; non-YMCA providers in the area; 50 m pool regional locations; hours of operations; part time staff positions; full time positions; and Operations Models 1 through 6.

Mayor Lunde asked if the operations plan included investment for capital improvements.

Mr. Barr stated each one of those models had a variable included and varied from \$50,000 to \$125,000 allocated annually to a sinking fund and could access it after 5- to 10-year period of time. He stated one of the challenges with the pools was that they were not turned off ever and would do their best to come up with a capital improvement budget and allocate those dollars. He stated that until they turned things off, they wouldn't know things are broken until they drained the pool and got in there.

Council Member Pha stated that Option 3 with the 50-meter pool, the numbers were different from numbers she had seen before. She asked if those numbers were the best case scenario and how realistic were the numbers for revenues.

Mr. Barr stated that was how much of a shift there was by going ahead by applying per athlete, per day facility fee. He stated it went from generating \$10,000 to \$15,000 per swim meet to a higher number. He stated he was being conservative with the number of meets listed in the proforma. He stated they increased it and didn't do it where there were three meets a month provided, but it got to a saturation point where it was 20 weekends over the course of the year and used for competition. He stated those were the two significant changes. He stated that on the lap lane rental that number was achievable, but his concern were the competition numbers. He stated the number of rental days were aggressive for the year 1 operation. He stated he knew there were a lot of facilities that were needed in the area, but there was also a number of meets that could take place in the area too.

Council Member Pha asked if the numbers factored in the possibility of another facility with a 50-meter pool was built within the region. She asked if they would have enough participation and revenues to recover the expenses.

Mr. Barr stated that within the operation plan, they made some assumptions. One was that the market did not change significantly in the next three to five years. He stated that one of the challenges they would have was going into an existing market and how receptive the groups would be to the new fee model. He stated it could be a challenge or it could be an opportunity to improve the cost recovery. He stated where those dollars were currently allocated and how

they were being absorbed and didn't know how the market would go ahead and react to that new model.

Council Member Pha stated her concerns were based on numbers. She stated they looked great but that was based on the current 50-meter pool facilities across the state. She stated if one more opened within the region, these numbers were not going to be realistic and the residents would be the ones paying for that difference for revenue. She stated she didn't want to put that tax liability on the residents to gamble on the idea that they were going to be the only facility in the region in the area.

Mr. Barr stated when they reviewed the operational numbers, that was why they did not go to point of saturations. He stated where it was now was 3 to 4 weekends of month, and was 20 weekends of year. He stated they could get to that number but was difficult to get that number on year 1.

Council Member B. Mata asked if the numbers for revenue included were just things for meets or revenue generated by residents, visitors or families just to use the pool.

Mr. Barr stated the operational models of each one was different and depended on what was included. He stated they all had daily admission opportunities, punch-pass opportunities, household memberships, individual memberships, swim lessons, group exercises in the water and out of the water, birthday parties, and enrichment programs. He stated when they took the gym into account, they looked at leagues and had looked at the full spectrum of programs and not just from competitive aquatics.

Recreation and Parks Director Yungers stated there was money included for capital asset replacement. She stated what was not included in the expense number was any payment to a bond or debt payment and in free standing facilities. She stated there was the expense to purchase the property and estimated costs were in the staff report for a 15-acre site. She stated it did not include the cost of the purchase for those on the Community Activity Center site for the potential need to purchase Hennepin County library and the estimated costs were included in staff report.

She stated the next steps in the process would be at the June 4 work session and would introduce the six options for an aquatics facility. She stated she met with Trust For Public Land in order to allow the community to have more of an idea of what direction they were going in and not complicate the questions in the polls. She stated they were looking for the Council to get it down to two models for consideration for the community polling. She stated they would also provide four previous park reinvestment models with the ranges of investments and a fifth model based on findings on the aquatics facilities feasibility study. She stated that in mid-June there would be some community polling going on and that information and initial results would be brought to the Council at the July 30 work session. She stated that at the August 20 special meeting Council had three actions, accept polling results and if it was their interest to move it forward with a reinvestment plan within the park system or to move forward with that including an aquatics facility. She stated that needed to be done and certified and had to have it completed by August 24. She stated they would also be given some language to consider as part of that polling process or certifying of the bond referendum.

Council Member B. Mata asked if the polling would include all proposed projects not just

aquatics facility and if would the polling separated out the aquatics facility and ask a question "would you be willing to pay "x" amount of dollars for this aquatics facility over and above anything we are doing or what we are doing.

Recreation and Parks Director Yungers stated how she understood how pollsters worked was that they would ask a variety of questions around preference and willingness to pay, for example, the costs, support reinvestment and it could be specific for a park within the system identified, to do gap filling within the trail system, synthetic turf and field house was another interest of the community. She stated they would take them and provide the costs through the park feasibility study and park system plan. She stated they would be taking a variety of questions and would call out separately if there would be an aquatics facility that had recreational amenities and their willingness to pay. She stated that would be broken down by median, average household, monthly cost and annual costs.

The following individuals addressed the Council:

1. Monica Dillenberg, Recreation and Parks Advisory Commission Chair stated they sent the Council a letter, so they could consider the impact of the cost of the 50-meter pool it would have and how the community would take it. She stated they were not saying they didn't want it, they just wanted to make sure if it was going to be in the bond referendum, they should think about it or find another way to finance it but would be a great idea.
2. Luke Day, General Chair, Minnesota Swimming and USA Swimming. Stated the 50-meter pool was a major need for them and beyond the need for water there were other components. He stated they had gone from having 13 50-meter pools to 8 indoor/outdoor facilities and the membership had doubled and continued to grow with less facilities. He stated they had 224 short courses, 25-yard pools and down to 8 for 50-meter training opportunities. He stated they traveled to the north metro and to Richfield for practice and traveled to Iowa City, Madison, Pleasant Prairie and North Dakota for competition. He stated they would see how quickly the long course meets filled up. He stated opening a new 50-meter pool would see more meets and more space to do so. He stated the programmers would be enthusiastic to jump at the opportunity to lead a facility and be proud of it if it was in the city.

Council Member Jacobson asked with 10,000 registered swimmers n Minnesota Swimming, how many meets were going unrealized.

Mr. Day stated Minnesota Swimming had reached its capacity for growth based on the facilities and needed additional 50-meter pool facilities. He stated Indiana had three times as many 50-meter facilities and were successful and had Olympians and at regional and national levels. He stated the City would have opportunities to do good service for swimmers if it had a regional draw and might get some state funding to ease the burden of the citizens.

1. David Benz, Great Wolf Swimming. He stated there was a real need for the pools. He asked how the numbers changed from losing half million and a couple weeks later it was not doing that anymore. He stated that was the question to ask because he presented them with the evidence of what was going on in real life. He stated last weekend, next weekend, Memorial weekend was off and the following weekend there were the meets going on at the University and were 1,150 athletes for the 50-meter meet. He stated next weekend was Memorial weekend and that was off. The next weekend was

Friday/Saturday/Sunday and being hosted by their team. He stated they rented the University of Minnesota at \$4,000 a day plus. He stated it was basic pool costs and custodians. He stated they had 850 athletes and in meeting today talked about how to make the meet smaller. They denied half of the teams that applied to be in meet and the entry opened 8 p.m. and by 8:01 p.m. it was full and no one else could get in. He stated the following meet was Aqua Jet meet at the U of M and full. He stated there is such a need for meets and fill in seconds and didn't have enough meets to swim in. He stated he had half of his swimmers not swimming in meets this summer because they didn't have a place for them to go. He stated he looked at the numbers and had them renting pool time, 2 hours a day for 10 lanes. On any given night they were renting six to seven pools. He stated they had Centennial pools, Lino Lakes, three to six lanes, Spring Lake Park pool, all seven lanes, Jackson pool, Champlin, eight lanes plus, Fridley pool, six lanes and Columbia Heights pool, six lanes. He stated they would operate all those pools in one night and were all full. He stated they had people quitting because the lanes were so crowded. He stated they just picked up a seven lane pool in Andover and paid \$8,700 a month to rent the pool. He stated there was a need and the want was there.

Council Member Jacobson stated there were questions about other facilities doing a 50-meter pool like the Blaine National Sports Center and New Hope.

Mr. Benz stated New Hope had a pool for the last 50 years and was torn out two months ago and were trying to get money from the legislature to rebuild it. He stated those opportunities were squeezed even more and the only 50-meter time he had to use was to go to the University late at night for a couple lanes for couple hours. He stated he is taking 40 kids to Utah so they can have an opportunity to swim in 50-meter pools. He stated Blaine Sports Center's mission was to get facilities developed within the State of Minnesota whether it was on their campus or another site and waiting to see what happened in Brooklyn Park. He stated they would get behind the effort and if it failed, they might go forward and do one on their own.

Council Member Jacobson stated that as they looked at Option 4, where a piece of property had a 50-meter pool on one end and the community lesson pool, splash pad on that site too, asked if the city operated one side and in a true public private partnership, the 50-meter pool would be built and operated with other dollars.

Mr. Benz stated he was not an expert on public private partnership but were good questions to ask and believed it could be a public private partnership. He stated he would be willing to get the 50-meter pool side, operate it and make money for the city.

Council Member Pha stated she was not for or against it and was just trying to evaluate it and get information. She stated that if there were a great number of swimmers, a tremendous need, and willing to pay, asked why did half of the 50-meter pools and why the remaining ones didn't make enough to operate and reinvest in their facility, like New Hope.

Mr. Benz stated that 50-meter pools were no longer sexy. He stated water slides, squirting mushrooms and the pirate ship in the water were sexy. He stated that when cities built pools, they were not always building swimming pools and were building play grounds with a water theme. He stated with New Hope, they had community meetings and their Council decided that they needed to move the city hall and removed the swimming pool and built city hall on that site.

He stated then they were going to decide what they were going to build and looked for legislative money to help with the 50-meter pool.

Recreation and Parks Director Yungers stated what was happening in many of those pools, was the idea of reinvesting in the system and keeping them, that they let them go and they failed and become a real problem. She stated that was why they had incorporated within all of their numbers the reinvestment numbers for the capital improvement; the sustainability plan and was important. She stated that had not been the case in many of those pools on the reinvestment plan or setting aside funds for the asset replacement.

1. Gordy Aune, Jr. stated that on the six options given, under the compensation for the wages stated they were all the same and asked if that would be feasible. He stated the program staff was just a variable and pay to them was not in the numbers given. He stated the city needed a partner. He asked what the hotel rooms referenced in Option 3, 4 and 6, meant.

Mr. Barr stated they used the same compensation rates from operations plan to operations plan and not to say the staffing was identical in each one. He stated they based the hourly rates and based the full-time staff rates on information they provided program staff within the appendix. He stated that depending on the programs, the rates for the instruction fluctuated and rather than saying aqua aerobics was "x" number of hours at \$20 dollars an hour and swimming lessons instructors at "x" number of hours at \$15, they just grouped that entire amount into one lump sum. He stated that within that one sum there was an "x" number of hours and five or six compensation rates. He stated that in the economic impact, they did not calculate hotels rooms into it because within the metro area they were not sure how many people would travel to attend some of those events. He stated they looked at direct spending that could happen on a day to day basis per athletes, per spectator.

#### 8.1 MOTION LUNDE, SECOND PHA TO ACCEPT THE AQUATIC FEASIBILITY STUDY AS PRESENTED.

Mayor Lunde stated he was in favor of the aquatics facility being put before the voters but struggled with the what and the constructions costs being borne by the residents. He stated he loved the idea of the 50-meter pool but was having a hard time to understand how the City could afford it. He stated he was not on board with a separate facility and site because the millions became even more when adding another site. He thought the City would lose all the ability to have everything in one area for staff be able to go back and forth to watch the front desk and not driving somewhere else to manage things.

Recreation and Parks Director Yungers stated that what they would try to do for the Council next week was to bring two different models for the polling or could go to three, but it was complicated with the questions. She stated additionally, they could talk about the different reinvestment models for park systems at large and try to come down to a couple of different models to poll around for that as well. She stated they could also take a look at other alternative funding options, bring it to the Council and try to work with bond counsel at what might be possible in that area.

Council Member Pha stated she didn't want to put the financial burden on the residents or the the risk on the City. She stated a 50-meter pool was not just going to benefit the city but

regionally and statewide but the financial burden was on the residents of the city. She stated she had conversations with many residents and got their feedback on the 50-meter pool and it hadn't been positive feedback. She stated it was mainly around the financial side of it and they did not want to foot bill for it. She asked if the pool was needed and there were people willing to pay, asked why it had not been working in the positive when it came to numbers in revenues and operating in the negative. She stated her biggest concern was not wanting the residents paying for pool and compensate for the negative revenues on an ongoing basis. She stated she would try to evaluate the information and would vote with the residents. She stated she thought it was important to do polling on what people wanted in the community because they were the ones that would pay for it.

8.1 THE VOTE ON THE MOTION PASSED UNANIMOUSLY.

9A COUNCIL MEMBER REPORTS AND ANNOUNCEMENTS – None.

9B CITY MANAGER REPORTS AND ANNOUNCEMENTS

City Manager Stroebel stated that on Wednesday, 5:30 – 7:30 p.m. at the Community Activity Center will be conversations regarding the community workshop on Highway 252. He stated if the Governor signed the bonding bill, it would be funding for the majority of the project and potentially that project starting in 2022. He stated MNDOT would also be doing some work on 35W and anxious to have both 35W and 252 closed at the same time.

He stated that on Wednesday, 6:00 – 7:30 p.m., was Coffee with Cops event at the Central Park shelter. He stated it was a great opportunity to get to know police staff.

He stated that on Friday through Saturday was the citywide garage sales and there was also an app to check where all the sales were in the city.

He stated the Tater Daze festival started on Thursday, June 14, through Saturday and the parade was on Thursday. He stated the festival events on Friday would be held at the CAC.

ADJOURNMENT – With consensus of the Council, Mayor Lunde adjourned the meeting at 10:01p.m.

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JEFFREY JONEAL LUNDE, MAYOR

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DEVIN MONTERO, CITY CLERK

REGULAR BROOKLYN PARK CITY COUNCIL MEETING

Monday, October 22, 2018  
7:00 p.m.

Brooklyn Park Council Chambers  
5200 85th Avenue North

CALL TO ORDER – Mayor Jeffrey Lunde

PRESENT: Mayor Jeffrey Lunde; Council Members Rich Gates, Susan Pha, Terry Parks, Mark Mata, Bob Mata and Lisa Jacobson; City Manager Jay Stroebel; City Attorney Lizzie Brodeen-Kuo; Finance Director LaTonia Green; Deputy Police Chief Todd Milburn and City Clerk Devin Montero.

ABSENT: Terry Parks (excused)

Mayor Lunde opened the meeting with the Pledge of Allegiance.

2A RESPONSE TO PRIOR PUBLIC COMMENT

City Manager Stroebel stated there was one public comment at the last meeting regarding 93<sup>rd</sup> Avenue speeding and accidents and concerns about campaign signs along that road. He stated staff had looked into the campaign signs and was working with community regarding 93<sup>rd</sup> Avenue.

2B PUBLIC COMMENT – None.

3A. MOTION MARK MATA, SECOND BOB MATA TO APPROVE THE AGENDA AS SUBMITTED BY THE CITY CLERK WITH ITEMS 4.6, 4.7, 4.11, AND 4.12 PULLED FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION AND ADDED ITEM 4.13. MOTION PASSED UNANIMOUSLY.

3B1 Presentation of Joint Master Plan Coon Rapids Dam Regional Park/Environmental Nature Area (CRDRP/ENA) and Announcement of Official Name Change to Mississippi Gateway Regional Park.

Recreation and Parks Director Jody Yungers introduced members of the Three Rivers Park District: Commissioner Jennifer DeJournett; Mary Whiteside, Director of Marketing and Community Engagement; and Boe Carlson, Executive Director of Three Rivers Park District. They briefed the Council about the progression around the Coon Rapids Dam Regional Park Master Plan.

4.0 MOTION GATES, SECOND LUNDE TO APPROVE THE FOLLOWING ADMINISTRATIVE CONSENT ITEMS: (Items 4.6, 4.7, 4.11 and 4.12 were removed for separate consideration and Item 4.13 was added.)

4.1 TO RELEASE THE ENGINEERING ESCROW (\$1,268.85) FOR “EVERFINE CARRIERS SERVICES” PROJECT #17-131 LOCATED AT 7801 XYLON AVE N FOR EVERFINE CARRIERS SERVICES.

4.1 TO RELEASE THE ENGINEERING ESCROW (\$1,005.28) FOR “NORTHSTAR BEHAVIORAL HEALTH” PROJECT #18-108 LOCATED AT 6900 78<sup>TH</sup> AVE N 7801 XYLON AVE N FOR NORTHSTAR BEHAVIORAL HEALTH.

4.1 TO RELEASE THE OFF-SITE LETTER OF CREDIT #222 POSTED BY AMERICAN NATIONAL BANK (\$846,300) FOR SATISFACTORY PROGRESS OF THE "ASTRA VILLAGE 4<sup>TH</sup> ADDITION/URBANA" PROJECT #17-133 LOCATED AT 93<sup>RD</sup> AVENUE BETWEEN REGENT AND ZANE AVE FOR NORTHBROOKE VENTURES, LLC.

4.1 TO RELEASE THE ON-SITE LETTER OF CREDIT #1160 POSTED BY TRADITION CAPITAL BANK (\$106,000) FOR SATISFACTORY PROGRESS OF THE "THE COVE AT NORTHWOODS PARK" PROJECT #17-108 LOCATED AT THE SE CORNER OF WINNETKA AVE AND 109<sup>TH</sup> AVE FOR LANDMARK 55 OF BROOKLYNPARK, LLC.

4.2 TO WAIVE THE READING AND ADOPT RESOLUTION #2018-148 APPROVING SUBMITTAL OF AN APPLICATION TO THE MINNESOTA DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT UNDER THE JOB CREATION FUND (JCF) PROGRAM.

4.3 TO WAIVE THE READING AND ADOPT RESOLUTION #2018-149 APPROVING A ONE-YEAR TIME EXTENSION FOR CONDITIONAL USE PERMIT #18-106 FOR A SELF-STORAGE FACILITY AT 8124 LAKELAND AVENUE NORTH.

4.4 TO WAIVE THE READING AND ADOPT RESOLUTION #2018-150 APPROVING FINAL PLAT OF "RIVER VIEW WEST ADDITION," SUBDIVIDING 0.55 ACRES INTO TWO SINGLE-FAMILY LOTS AT 9203 WEST RIVER ROAD AND 1300 92ND AVENUE NORTH.

4.5 TO SET A PUBLIC HEARING ON NOVEMBER 26, 2018, TO SOLICIT TESTIMONY AND CONSIDER THE RENEWAL OF THE CURRENCY EXCHANGE LICENSE FOR SJB ENTERPRISE INC. DBA YOUR EXCHANGE LOCATED AT 7646 BROOKLYN BOULEVARD.

4.8 TO SET A PUBLIC HEARING ON NOVEMBER 26, 2018, TO SOLICIT TESTIMONY AND CONSIDER THE RENEWAL OF THE CURRENCY EXCHANGE LICENSE FOR UNBANK COMPANY, LLP LOCATED AT 6319 ZANE AVENUE NORTH.

4.9 TO ACCEPT THE PETITION SUBMITTED BY CHARLES SMITH ON OCTOBER 17, 2018 REGARDING THE PROPOSED CHANGES TO LAKELAND PARK AND DIRECT STAFF TO LOOK INTO THE MATTER.

4.10 TO WAIVE THE READING AND ADOPT ON SECOND READING ORDINANCE #2018-1236 REZONING 2.51 ACRES FROM DETACHED SINGLE-FAMILY RESIDENTIAL (R2B) TO DETACHED SINGLE-FAMILY RESIDENTIAL WITH PLANNED DEVELOPMENT OVERLAY (R4B/PD) AT THE NORTHEAST CORNER OF 101ST AVENUE AND FALLGOLD PARKWAY.

4.10 TO WAIVE THE READING AND ADOPT RESOLUTION #2018-151 APPROVING FINAL PLAT OF "VILLAS OF RUSH CREEK TRAIL 4TH ADDITION" SUBDIVIDING 2.63 ACRES INTO 10 SINGLE FAMILY LOTS AND 1 OUTLOT NORTHEAST OF 101ST AVENUE AND FALLGOLD PARKWAY.

MOTION PASSED UNANIMOUSLY.

4.6 Council Member Mark Mata stated the City had implemented money for a study for \$24,000 and now the City wanted to add another \$7,000 to do an additional scope. He stated they already knew the difference between \$31 million and \$22.5 million and that it was going to be a burden to the City or surrounding property owners. He stated that to go and spend another \$7,000 to reach a wider scope and some different properties and assess them differently was a waste of money. He stated when there was a development the size that the Scanlan company would bring, a five-story building that at some point in time, they would turn around and go back to Hennepin County to reassess their value. He stated any money the city assessed to them would be forfeited back to them through the process of tax reconciliation with Hennepin County. He thought they needed to move forward with the bridge and save \$7,000 and he pulled the item because his intent was to not support it.

Traffic Engineer Holstein stated it was not expanding the scope of the properties that would be assessed. He stated it was about diving more in-depth into the analysis already being taken to complete the analysis. He stated it was about a change on the North Park site that had been a change that was out of scope from the original scope of SRF work. He stated that Attachment B in Item 4.6 laid out those six items that would expand the scope of that study. He stated they presented to the Council in September on what they were trying to do and giving Council options to help make up that \$8.5 million. He stated one of those options would be to go through an assessment process and assess those benefitting properties and providing other options. He stated it just allowed the Council to choose the option they wanted and assess those benefitting properties.

Council Member Mata asked if they could assess the surrounding property owners.

Traffic Engineer Holstein stated there was state law under Chapter 429 and they had to follow the special assessment process. He stated they had to go through process to first determine how they wanted to assess and incorporate that in a feasibility study or report, which would then have a preliminary assessment and public hearing process. He stated there was a defined process they had to follow and the item just allowed them to complete that process and get into that feasibility study.

4.6 MOTION LUNDE, SECOND JACOBSON TO WAIVE THE READING AND ADOPT RESOLUTION #2018-152 TO APPROVE SUPPLEMENTAL LETTER AGREEMENT NO. 18 WITH SRF CONSULTING GROUP, INC. TO PROVIDE SERVICES RELATING TO THE BENEFIT STUDY FOR THE TRUNK HIGHWAY 169 / 101ST AVENUE INTERCHANGE; CIP 4042. MOTION PASSED. (5 TO 1) M. MATA VOTED NO.

4.7 Council Member Mark Mata stated it was a well pump to be replaced and has to do with maintenance and made it to month 60 and went bad. He asked if they should not be moving preventive maintenance up to 54 months as opposed to 60. He stated that under the statement "the Council has the following Alternatives, that #2 said to deny the payment and order staff to renegotiate the pricing. He stated he was surprised it was written there and his first comment would be to send it back to staff to renegotiate the price. He stated that was what he would like to do was to have the Council address bullet #2 that was asking staff to go back and renegotiate the price.

Operations and Maintenance Director Ruiz stated the pumps ran continuously and it was not an item that normally had routine maintenance. He stated that sometimes there could be a glitch

that could be fixed, and, in this case, it ran straight through for five years and the life of those pumps was five years. He stated they could do a small fix and get another few months or year out of it or replace it and get another five years and that was what they were recommending, to do the replacement. He stated that on the terms of Council alternatives, they tried to give Council several options when they brought items to the Council. He stated one option was to authorize the approval of the work to move forward. He stated the Council always had the option to deny staff's recommendation. He stated if that was confusing, they could leave that off. He stated that on the negotiations, they already negotiated with the contractor and they went back and tried to negotiate, they would say that was their price and if they wanted it done they could do it; if not, they would not do the work. He stated it was in the ball park price on that type of work done with other companies.

Council Member Mata asked why the last sentence of the first paragraph said: "for the well has been running continuously for over 60 months and was due for maintenance." He stated if they got replaced in five years, he was confused at what maintenance they were going to do if they just replaced them. He asked if that was the replacement maintenance and if they just missed on a word that threw him off. He stated if they already negotiated it, he would appreciate to not give the option of telling staff to negotiate it because it was a redundancy. He stated they could say something like, the Council didn't have anything to consider because it was an emergency repair and had to do it and that was the price. He stated that would be a lot clearer.

4.7 MOTION MARK MATA, SECOND JACOBSON TO WAIVE THE READING AND ADOPT RESOLUTION #2018-153 TO AUTHORIZE PAYMENT FOR REPAIRS FOR MUNICIPAL WELL PUMP #13 TO E. H. RENNER & SONS, INC. MOTION PASSED UNANIMOUSLY.

4.11 Council Member Mark Mata stated he would like to see the item tabled and have staff look at the policy deeper and make more changes to it. He stated it was an old document with very few changes over the years and had a different Council than 15 years ago. He stated there were changes in there with dollar values and were things in there that he would like to see for checks and balances so they didn't have particular Directors handing out contracts to personal friends without going through the competitive bid process and going through two bids minimum. He would like to give it back and have Finance Director Green relook at it and bring it back because there were more changes than just one change and that policy had not been reviewed in many years.

Finance Director Green stated the item had been on her white board for some time and was something that they needed to take a deeper dive into. She stated since she had been the Finance Director, the threshold of the state statute changed from \$100,000 to \$175,000 and wanted to make sure they were able to move contracts through as quickly as possible and align with the state bids. She stated the reason she moved forward with it was she was looking at the entire purchasing policy and tried to start with the system to make sure they had systems in place and had the EPR system representatives walk them through and help staff. She stated she was looking at the system and written policy and taking small steps and hadn't gotten to all of it. She didn't think it was something she would be able to do this year and that was why she wanted to move a small portion now, but her plan had always been to update the policies.

Council Member Jacobson asked if they were to pass it tonight, is she could give the Council and estimate when it would come back with the remaining changes on the policy. She stated

she was not interested in holding anything up, but want to have a firm idea when they would get a complete edited policy.

Finance Director Green stated they could have the policy reviewed, updated within the first quarter of 2019.

Mayor Lunde stated there were valid points on getting it updated and he heard it was the timing and also was a busy season for finance in getting budgets ready. He stated he trusted that they would approach it that way even with the change tonight if approved and would be something they could work on and bring it back.

#### 4.11 MOTION LUNDE, SECOND JACOBSON TO ADOPT THE CHANGE TO THE COMPETITIVE BIDDING THRESHOLD IN THE ATTACHED PURCHASING POLICY.

Council Member Pha stated that some of the points made sense and agreed with not holding up anything. She would like to learn more about what the difference was between competitive bidding and why the threshold was being almost doubled now. She asked what kind of projects there were when talking about a \$75,000 difference. She believed that competitive bidding was a good thing but increasing it to \$175,000 worried her unless she knew what projects would fall under that. She stated \$100,000 was good and understood the State went up but didn't necessarily mean the City had to adopt that and asked if they could adopt a lesser amount.

Finance Director Green stated they could adopt a lesser amount, but traditionally most cities did align with the state policy, uniform municipal contracting law.

Council Member Pha stated competitive bidding helped with transparency and making sure there was a trust when talking bids in and taking the best bids. She stated that almost doubling it was concerning unless she learned more about it and the Council did not have conversations about it prior to it being on the agenda. She agreed they needed to have deeper conversations about the whole policy before adopting it and stated she would vote no and asked that it be brought back in the first quarter of next year.

City Manager Stroebel stated one other factor was that the city manager's purchasing authority went up to \$25,000 and directors were less. He stated any contract beyond that \$25,000 needed to receive two quotes and be approved by the Council, even though the item would change the threshold from \$100,000 to \$175,000. He stated that based on the current version of the purchasing manual, the Council still needed to approve on things above \$25,000 and would still have the ability to review it per the existing purchasing policy manual.

Council Member Bob Mata stated all purchases greater than \$100,000 still needed Council approval anyway and was not sure why they needed to raise the threshold other than the fact one said competitive bidding and the other said to have two bids. He suggested waiting until they could see how the new policy would structure out rather than just doing it at \$175,000. He stated that having to come to Council over \$100,000 was fine now and had been working and hadn't seen any projects held up. He stated he would like to see the Council hold off on it until the entire policy was updated rather than voting on it.

Mayor Lunde called for a roll call vote.

4.11 THE ROLL CALL VOTE WAS TIED ON A ROLL CALL VOTE AS FOLLOWS: YES – JACOBSON, GATES, LUNDE; NO – PHA, M. MATA, B. MATA.

Mayor Lunde asked if they had an idea for a timeline or if it should be tabled indefinitely because that way the Council didn't put a timeline on it.

City Manager Stroebel stated Finance Director Green stated the first quarter of next year would be optimal but thought giving them more room until the end of the second quarter depending on how things worked out would be a great strategy going forward. He stated they would strive to get it in by the end of the first quarter but it was a policy that existed for a long time and needed attention and wanted to be thoughtful when they came back to the Council and would appreciate that time.

4.11 MOTION MARK MATA, SECOND LUNDE TO TABLE ITEM 4.11 REGARDING THE AMENDMENTS TO THE PURCHASING POLICY UNTIL THE END OF THE SECOND QUARTER 2019. THE MOTION PASSED UNANIMOUSLY.

4.12 MOTION M. MATA, SECOND B. MATA TO WAIVE THE READING AND ADOPT RESOLUTION #2018-154 REJECTING THE INSTALLATION OF PROPOSED NOISE WALLS ALONG 101ST AVENUE NORTH BETWEEN JEFFERSON HIGHWAY AND XYLON AVENUE AS PART OF THE TH 169 / 101ST AVENUE INTERCHANGE PROJECT; CIP 4042. THE MOTION PASSED UNANIMOUSLY.

5.1 Finance Director Green briefed the Council on the Resolution for Proposed Special Assessments for Certain Delinquent Utility Bills, Weed Cutting Charges, Utility Invoices, Administrative Penalty Citations, Nuisance Abatement Charges, and Fire Inspection Fees.

5.1 Mayor Lunde continued the Public Hearing.

5.1 The following individuals addressed the Council.

1. Farshid Naji, 8800 Hillswick Trail. Stated there was hail damage to his house on July 6, 2017 and waiting for insurance. By the time he found workers, winter hit and was a hurricane on east coast and the workers were hard to find. He stated it would cost a lot if it was done in the winter and had snow to April 15. He stated the siding was done by May and in good faith did additional work on the house to increase the property value.
2. Nadia Al-Hasnawi, 7401 Regent Avenue. Stated people kept dropping trash in their dumpsters and continues to happen and not be responsible for fees associated with it. Asked for the fees to be waived and help from law enforcement to prevent it happening again.

5.1 Mayor Lunde closed the public hearing and returned it to the table for consideration.

5.1 MOTION LUNDE, SECOND JACOBSON TO WAIVE THE READING AND ADOPT RESOLUTION #2018-155 LEVYING TAX FOR DELINQUENT UTILITY BILLS, WEED CUTTING CHARGES, UTILITY INVOICES, ADMINISTRATIVE PENALTY CITATIONS, NUISANCE ABATEMENT CHARGES, AND FIRE INSPECTION FEES ON THE PROPERTIES PRESENTED AND ACCEPT THE STAFF'S RECOMMENDATION ON THE REMAINING PROPERTIES.

5.1 Council Member Bob Mata made a friendly amendment to eliminate the \$600 fine for 8800 Hillswick Trail and was seconded by Council Member Jacobson.

5.1 The friendly amendment was accepted by Mayor Lunde and Council Member Jacobson.

5.1 Mayor Lunde stated the main motion now read to accept the recommendation of staff excluding 8800 Hillswick Trail, which has been revised to zero.

5.1 Council Member Mark Mata made a friendly amendment to the motion to waive the \$310.74 fine for 7405 Regent Avenue.

5.1 The friendly amendment was accepted by Mayor Lunde and Council Member Jacobson.

5.1 THE VOTE ON THE AMENDED MAIN MOTION EXCLUDING 8800 HILLSWICK TRAIL AND 7405 REGENT AVENUE PASSED UNANIMOUSLY.

6.1 Planning Director Sherman briefed the Council on the Tibetan American Foundation of Minnesota – Amendment to the Planned Unit Development to Allow for a Cultural Center at 6731 Boone Avenue North.

6.1 MOTION LUNDE, SECOND GATES TO WAIVE THE READING AND ADOPT RESOLUTION #2018-156 APPROVING AN AMENDMENT TO PLANNED UNIT DEVELOPMENT #1995-151 TO ALLOW AN INSTITUTIONAL USE AT 6731 BOONE AVENUE NORTH.

Council Member Mark Mata stated that ever since he had been on the Council, they had a lot of land they couldn't tax, whether it was parks, city buildings, churches and schools. He stated tonight they were going to take another property and make it nontaxable land and that was a difficult decision. He stated they did have places in the city where they had other entities tax free that were leaving and also at a time had nontaxable entities that paid the City's portion of the taxes no matter if there was a fire, the City would come and protect them and when they had a police situation, they couldn't stop them to come and help. He stated of the resources the City had to provide to them, the rest of the citizens and business owners in the City had to pick up the costs. He stated that became a difficult decision for him. He stated he knew the building sat vacant for 17 years, but in doing the math, the \$7,000 x 17 years was over \$124,000 the City had received in taxes along with the county and school districts too. He stated to them it was free money, but to the City it was an expense. He stated he was not going to force someone if they were going to change taxable parcel into a nontaxable that they paid the City's share of taxes. He stated there were other entities that did that because they needed the City's Fire Department, Police Department and services.

He stated he couldn't support it going there unless the tenant was to agree to the cities portion of taxes. He stated he voted the same way in the past and would stay the same way today. He stated they would get the six votes to come to the city, but he was looking at it with the nontaxable piece of land.

6.1 THE MOTION PASSED. (5 TO 1) M. MATA VOTED NO.

7.1 City Engineer Struve briefed the Council on the Petition and Approve Installation of a Stop Sign Along Southbound Florida Avenue at 101st Avenue North.

7.1 MOTION LUNDE, SECOND GATES TO ACCEPT PETITION AND APPROVE INSTALLATION OF A STOP SIGN ALONG SOUTHBOUND FLORIDA AVENUE AT 101ST AVENUE NORTH. MOTION PASSED UNANIMOUSLY.

7.2 Rental and Business Licensing Manager Keith Jullie briefed the Council on the Tobacco Sales License for Brooklyn Tobacco LLC, Doing Business as Brooklyn Tobacco, Located at 8458 Xerxes Avenue N, Brooklyn Park, MN 55444.

7.2 MOTION JACOBSON, SECOND LUNDE TO APPROVE A TOBACCO SALES LICENSE FOR BROOKLYN TOBACCO LLC, DOING BUSINESS AS BROOKLYN TOBACCO, LOCATED AT 8458 XERXES AVENUE N, BROOKLYN PARK, MN 55444. MOTION PASSED. (5 TO 1) GATES VOTED NO.

#### 9A COUNCIL MEMBER REPORTS AND ANNOUNCEMENTS

Council Member Jacobson stated the Business forward event was well attended and there was great information. She stated staff did an excellent job.

#### 9B CITY MANAGER REPORTS AND ANNOUNCEMENTS

City Manager Stroebel stated next Monday was a Council work session. He stated the November 5 meeting was not being held and Monday, November 12 was Veteran's Day and the Council meeting was moved to Tuesday, November 13.

ADJOURNMENT – With consensus of the Council, Mayor Lunde adjourned the meeting at 9:30 p.m.

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JEFFREY JONEAL LUNDE, MAYOR

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DEVIN MONTERO, CITY CLERK

## REGULAR BROOKLYN PARK CITY COUNCIL MEETING

Monday, June 24, 2019  
7:00 p.m.

Brooklyn Park Council Chambers  
5200 85th Avenue North

CALL TO ORDER – Mayor Jeffrey Lunde

PRESENT: Mayor Jeffrey Lunde; Council Members Tonja West-Hafner, Susan Pha, Terry Parks, Mark Mata, Wynfred Russell and Lisa Jacobson; City Manager Jay Stroebel; City Attorney Jim Thomson; Community Development Director Kim Berggren; Finance Director LaTonia Green; Deputy Police Chief Mark Bruley and City Clerk Devin Montero.

ABSENT: None.

Mayor Lunde opened the meeting with the Pledge of Allegiance.

### 2A RESPONSE TO PRIOR PUBLIC COMMENT

City Manager Stroebel stated at the last Council meeting there was a resident with concerns on 93rd Avenue on speeding and pedestrian safety. He stated that after the last Council meeting, he learned that the legislature did pass new legislation allowing local units of government providing more authority to have more control over local speed limits on their local roads. He stated the League of Minnesota Cities would be providing some guidance to communities about how they should consider setting up a process for considering any changes to speed limits on local roads. He stated it might be a factor as the Council and staff considered potential changes to 93rd Avenue.

### 2B PUBLIC COMMENT

1. Collette Guyott-Hempel, 9277 Trinity Gardens.

Stated 93<sup>rd</sup> would always be considered the alternate to TH610, MNDOT had no intentions of helping to change that and the County had no interest in taking back roads unless a trade in roadways was done with city. She stated Jefferson Highway was the only other city street that had 50 mph but had sidewalks and pathways on one side if not both sides. She stated pedestrians and bikes continue to use 93<sup>rd</sup> Avenue during the day and at night. She stated during Tater Daze she saw 30 people in a 15-minute time span, and some preschoolers were included in that number, that were walking along the shoulder of the roadway. She stated she saw cars backed up from TH610 past 94<sup>th</sup> Avenue almost going back to Zane around 5 p.m. She stated that half mile of roadway had four street lights now that 94<sup>th</sup> was included and her cul-de-sac had five street lights. She thanked the Council for the crosswalk and was used for Tater Daze. She stated since last October there had been four accidents plus the Lions Club picked up car pieces on the roadway. She thanked Council Members Mata, Parks, and Jacobson for trying to make the road safe. She stated that three developers were asking that the road be finished off and developed just like 30 years ago and some cities were keeping the state money and not doing road.

3A. MOTION WEST-HAFNER, SECOND JACOBSON TO APPROVE THE AGENDA AS SUBMITTED BY THE CITY CLERK. MOTION PASSED UNANIMOUSLY.

3B. PUBLIC PRESENTATIONS/PROCLAMATIONS/RECEIPT OF GENERAL

COMMUNICATIONS

3B1 North Metro Mayors Association/Metro Cities Legislative Update

City Manager Stroebel introduced Tory Olsen, North Metro Mayors Association and Patricia Nauman, Metro Cities and they gave a legislative update.

3B2 Discussion of Comprehensive Plan Modifications

Planning Director Cindy Sherman briefed the Council on the Comprehensive Plan modifications and introduced Erin Perdu, WSB and City's planning consultant, briefed the Council on the modifications to the 2040 Comprehensive Plan.

4.0 MOTION WEST-HAFNER, SECOND PARKS TO APPROVE THE FOLLOWING ADMINISTRATIVE CONSENT ITEMS:

4.1 TO RECEIVE AND PLACE ON FILE THE PETITION FOR VACATION OF THE DRAINAGE AND UTILITY EASEMENT ON LOT 1, BLOCK 2, MILLS ADDITION TO BROOKLYN PARK.

4.1 TO WAIVE THE READING AND ADOPT RESOLUTION #2019-98 ORDERING A PUBLIC HEARING FOR VACATION OF THE DRAINAGE AND UTILITY EASEMENT ON LOT 1, BLOCK 2, MILLS ADDITION TO BROOKLYN PARK.

4.2 TO WAIVE THE READING AND ADOPT RESOLUTION #2019-99 APPROVING THE CITY OF BROOKLYN PARK TO JOIN THE COAL TAR LAWSUIT.

4.3 TO RECEIVE THE CITY INVESTMENT REPORT FOR THE QUARTER ENDED MARCH 31, 2019.

4.4 TO RELEASE THE CASH BOND (\$4,800) AND THE ENGINEERING ESCROW (\$1,636.56) FOR SATISFACTORY COMPLETION OF THE "TODAY'S LIFE CHILDCARE" PROJECT #17-004 LOCATED AT 9995 XENIA AVE N FOR TODAY'S LIFE PROPERTIES LLC.

4.4 TO RELEASE THE PERFORMANCE BOND #015052574 BY LIBERTY MUTUAL (\$415,300), FOR SATISFACTORY PROGRESS OF THE "NOBLE OFFICE PARK 2<sup>ND</sup> ADDITION/CVS" PROJECT #16-117 LOCATED AT 4500 OAK GROVE PARKWAY N FOR FIVE STAR DEVELOPMENT OF ALABAMA, INC.

4.5 TO WAIVE THE READING AND ADOPT RESOLUTION #2019-100 APPROVING FINAL PLAT OF "ASTRA VILLAGE 5<sup>TH</sup> ADDITION," SUBDIVIDING 19.11 ACRES INTO TWO OUTLOTS NORTHWEST OF 93<sup>RD</sup> AND REGENT AVENUES.

4.6 TO INCREASE THE APPROPRIATION FOR THE PARK CENTER TURF FIELD LIGHTING, DOME AND SUPPORT BUILDING AT PARK CENTER HIGH SCHOOL BY \$100,000 NOT TO EXCEED \$3,561,275 OUT OF THE PARK BOND FUNDS.

MOTION PASSED UNANIMOUSLY.

5.1 Public Hearing and First Reading of an Ordinance to Consider the Recommendation of the Brooklyn Park Charter Commission Amending Charter Chapters 2, 3, 4, 5, 6, 7, 8, 12, 13 and 14, and Adding Sections 4.10 and 14.01A of the Home Rule City Charter.

Charter Commission Chair Scott Simmons briefed the Council on the recommendation of the Brooklyn Park Charter Commission Amending Charter Chapters 2, 3, 4, 5, 6, 7, 8, 12, 13 and 14, and Adding Sections 4.10 and 14.01A of the Home Rule City Charter.

5.1 Mayor Lunde opened the public hearing to consider the recommendation of the Brooklyn Park Charter Commission Amending Charter Chapters 2, 3, 4, 5, 6, 7, 8, 12, 13 and 14, and Adding Sections 4.10 and 14.01A of the Home Rule City Charter.

5.1 The following individuals addressed the Council – None.

5.1 Mayor Lunde closed the public hearing and returned the item back to the table for consideration.

5.1 MOTION MATA, SECOND LUNDE TO WAIVE THE READING AND ADOPT ON FIRST READING AN ORDINANCE AMENDING CHARTER CHAPTERS 2, 3, 4, 5, 6, 7, 8, 12, 13 AND 14, AND ADDING SECTIONS 4.10 AND 14.01A OF THE HOME RULE CITY CHARTER. MOTION PASSED UNANIMOUSLY.

6.1 Homeward Bound, USA, Inc (Peter Hagen) – Waiver of Platting #19-109 to Subdivide the Existing Lot into Two Single-Family Residential Lots at 6409 Edgemont Boulevard North.

Planning Director Cindy Sherman briefed the Council on the Waiver of Platting #19-109 to Subdivide the Existing Lot into Two Single-Family Residential Lots at 6409 Edgemont Boulevard North.

6.1 MOTION PHA, SECOND RUSSELL TO WAIVE THE READING AND ADOPT RESOLUTION #2019-101 APPROVING A WAIVER OF PLATTING TO SUBDIVIDE 6409 EDMONT BOULEVARD NORTH INTO TWO SINGLE-FAMILY PARCELS.

Council Member Mata stated the property was divided at one time and when it was done, if there was any requirement to pay anything, they would have paid it. At that time there were no park dedication fees and nothing was paid.

He stated that if someone today was take a double lot, platted it and paid park dedication fees and at some point they put it back together, they had fulfilled the requirement. He stated they already paid to divide it once and now had to pay to divide it again. He stated his question was that even though it was a zero-dollar value, it had been replatted already and they were just going back to what was already done. He stated they created along the line the different fees that went with different things. He stated it was reverting back to something that was already done and asked why they would they have to pay on something that was already put there and they were just erasing a line and doing some paperwork.

Planning Director Sherman stated the policy was that anytime they had a subdivision, and that was considered a subdivision of the parcel again, they would collect park fees on the portion of property that was going to support the new home. She stated they were not going back and charging them on the lot that existed and the home that existed prior, but of the new construction lot and that was consistent with the policy they collected on properties.

Council Member Mata stated that if someone had a lot now and did the same thing, divided it, they would pay on both. He stated that at that time, it was zero and zero and had already been done and they were charging someone they already put in place today that was already done several years ago. He stated he understood it wasn't a piece of land that was being platted for the first time. He stated now it was being platted for the very first time and the policy now was park dedication fees and the city was just putting the line back there that wasn't there before and asked why they were being charged for it.

Planning Director Sherman stated if the Council chose to not charge them the park fee, it was the Council's decision. She stated they were following the policy they had historically followed.

6.1 MOTION MATA TO AMEND THE MOTION TO REMOVE THE PARK DEDICATION FEES DUE TO THE LAND BEING REPLATTED ALREADY. THE MOTION FAILED FOR LACK OF A SECOND.

6.1 THE VOTE ON THE MAIN MOTION PASSED UNANIMOUSLY.

6.2 FPI, LLC – Conditional Use Permit #19-110 for Auto Glass Repair, Calibration Services for Vehicle Safety Equipment, Repair and Storage of Landscaping and Lawncare Equipment Owned by the Business at 8208 Brooklyn Boulevard.

Planning Director Cindy Sherman briefed the Council on the Conditional Use Permit #19-110 for Auto Glass Repair, Calibration Services for Vehicle Safety Equipment, Repair and Storage of Landscaping and Lawncare Equipment Owned by the Business at 8208 Brooklyn Boulevard.

6.2 MOTION RUSSELL, SECOND PARKS TO WAIVE THE READING AND ADOPT RESOLUTION #2019-102 APPROVING CONDITIONAL USE PERMIT #19-110 FOR AUTO GLASS REPAIR, CALIBRATION SERVICES FOR VEHICLE SAFETY EQUIPMENT, REPAIR AND STORAGE OF LANDSCAPING AND LAWNCARE EQUIPMENT OWNED BY THE BUSINESS AT 8208 BROOKLYN BOULEVARD, SUBJECT TO CONDITIONS IN THE RESOLUTION. MOTION PASSED UNANIMOUSLY.

6.3 Ryan Companies US, Inc./IBEW – Rezoning, Plat, and Site Plan Review #19-111 for a Union Hall at 6648-6700 West Broadway Avenue.

Planning Director Cindy Sherman briefed the Council on the Rezoning, Plat, and Site Plan Review #19-111 for a Union Hall at 6648-6700 West Broadway Avenue.

6.3 MOTION LUNDE, SECOND WEST-HAFNER TO WAIVE THE READING AND ADOPT ON FIRST READING AN ORDINANCE AMENDING CHAPTER 152 REZONING 7.29 ACRES FROM DETACHED SINGLE-FAMILY RESIDENTIAL (R3) TO NEIGHBORHOOD RETAIL BUSINESS DISTRICT (B2) SOUTH OF INTERSTATE 94 AND EAST OF WEST BROADWAY. MOTION PASSED UNANIMOUSLY.

6.3 MOTION LUNDE, SECOND JACOBSON TO WAIVE THE READING AND ADOPT RESOLUTION #2019-103 APPROVING PRELIMINARY PLAT OF "IBEW ACRES" SUBDIVIDING 7.29 ACRES INTO ONE BUSINESS LOT AND ONE OUTLOT SOUTH OF INTERSTATE 94 AND EAST OF WEST BROADWAY. MOTION PASSED UNANIMOUSLY.

7.1 Accept Deputy Registrar Reimbursement Grant.

Finance Director LaTonia Green briefed the Council on the Deputy Registrar reimbursement Grant.

7.1 MOTION LUNDE, SECOND WEST-HAFNER TO WAIVE THE READING AND ADOPT RESOLUTION #2019-104 AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE THE GRANT AND LIABILITY RELEASE. MOTION PASSED UNANIMOUSLY.

7.1 MOTION LUNDE, SECOND WEST-HAFNER TO WAIVE THE READING AND ADOPT RESOLUTION #2019- 105 AMENDING THE 2019 GENERAL FUND BUDGET TO INCLUDE REVENUE FROM A STATE OF MINNESOTA DEPUTY REGISTRAR REIMBURSEMENT GRANT. MOTION PASSED UNANIMOUSLY

7.2 Award the Sale of General Obligation Bonds 2019A.

Finance Director LaTonia Green briefed the Council on the sale of General Obligation Bonds 2019A.

7.2 MOTION JACOBSON, SECOND PARKS TO WAIVE THE READING AND ADOPT RESOLUTION #2019-106 AWARDED THE SALE OF GENERAL OBLIGATION BONDS, SERIES 2019A, IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$4,470,000, FIXING THEIR FORM AND SPECIFICATIONS; DIRECTING THEIR EXECUTION AND DELIVERY; AND PROVIDING FOR THEIR PAYMENT.

Council Member Mata stated he realized the financial implications side of it that it was better to do the big project and do all the projects in one deal. He stated there was a project in there, Eidem Farm, that he was not supporting and to pull out millions of dollars to support a non-working farm where the city had families that were working their own land, and the city didn't support them. He stated he was not interested in spending millions of dollars of taxpayers money for that project and saw it was included.

7.2 THE MOTION PASSED. (6 TO 1) MATA VOTED NO.

## 9A COUNCIL MEMBER REPORTS AND ANNOUNCEMENTS

Council Member Mata stated that based on a past decision the Council had taken based on the fire chief's recommendation to go to model of full time staff that the Fire Fighters Relief Association of the paid-on call also included full time fire fighters and the two pensions at the same time. He stated there was some discussion on membership and who belong there and was some questions around state law on whether the city was circumventing state law to make that work He stated at next month's board meeting there would be a decision on voting to disband and was not sure how the vote would go. He thought that as a city to have them hold that vote until Council could determine, by state law, who belonged in that to make the vote to

disband. He thought there were members in there that should not be voting on it and that was what was being looked into. He stated he wanted to eliminate the Council and the city from future litigations and lawsuits to make sure that association had correct interpretation by the correct authority on who belonged there to make that vote. Otherwise they were going to be spending a lot of money having to go backwards on stuff when they could just wait and make sure it had been determined who was a voting member and who belonged there as of today.

He stated that was his pass on to city manager and Council that a vote would happen but there was a question on who belonged in that membership. He stated the Council should give direction to hold on until it had been proven and knew who belonged in there.

He stated they tried it before when groups unionized in the same department and cost the city over a couple of hundreds of thousands of dollars to fight what eventually happened anyway and wanted to eliminate the cost to the taxpayers.

City Manager Stroebel stated the Relief Association was an independent organization and asked the city attorney if the Council had the ability or the city manager had the ability of providing any timeline for when the Relief Association should take up the vote.

City Attorney Thomson stated he would look into the issue Council Member Mata raised. He stated he didn't believe the Council had the authority to direct the association to either not act or to act because it was an independent nonprofit corporation.

Council Member Mata stated the direction was being given by the Fire Chief who fell under the control of the city manager, which fell under the control of the Council. He stated if the Council could pass a direction back to the city manager that they wanted it clarified, and the city manager could pass the direction back to the Fire Department and that would hold. He stated he was trying to save the city unneeded expenses.

City Manager Stroebel stated he would work with the city attorney to address the concerns of Council Member Mata.

Mayor Lunde asked that the city attorney get a memo to the Council responding to those concerns.

City Manager Stroebel stated the next Council meeting was July 8 and the proposed vote of Relief Association was on July 9 and they would provide as much information they could.

#### 9B CITY MANAGER REPORTS AND ANNOUNCEMENTS

City Manager Stroebel stated there wouldn't be a Council meeting next week. He stated they traditionally took off whatever meeting fell on the July 4 week.

He stated he would be at the LMC conference in Duluth on Wednesday afternoon through Friday.

He stated the first City Hall on the Go was at Hartkopf park on Thursday at 6:30 p.m.

BROOKLYN PARK COUNCIL MEETING; June 24, 2019...Page 7

He stated the City was hosting the Housing Repair Resources Workshop on Saturday, 9 a.m. to 12 p.m. at the Community Activity Center.

ADJOURNMENT – With consensus of the Council, Mayor Lunde adjourned the meeting at 9:04 p.m.

JEFFREY JONEAL LUNDE, MAYOR

DEVIN MONTERO, CITY CLERK

## REGULAR BROOKLYN PARK CITY COUNCIL MEETING

Monday, July 8, 2019  
7:00 p.m.

Brooklyn Park Council Chambers  
5200 85th Avenue North

CALL TO ORDER – Mayor Jeffrey Lunde

PRESENT: Mayor Jeffrey Lunde; Council Members Tonja West-Hafner, Terry Parks, Wynfred Russell and Lisa Jacobson; City Manager Jay Stroebel; City Attorney Jim Thomson; Deputy Police Chief Todd Milburn and City Clerk Devin Montero.

ABSENT: Council Members Susan Pha (excused) and Mark Mata (excused)

Mayor Lunde opened the meeting with the Pledge of Allegiance.

### 2A RESPONSE TO PRIOR PUBLIC COMMENT

City Manager Stroebel stated resident addressed the Council at the last meeting advocating for additional safety measures on 93<sup>rd</sup> Avenue. He stated the City had put in place some additional speed enforcement along 93<sup>rd</sup> Avenue, added crosswalk markings at Regent/93<sup>rd</sup> Avenue. He stated tonight they were continuing to take measures on 93<sup>rd</sup>/Noble in terms of putting in a full stop light on that location. He stated they would have a full conversation later this year on the speed limit on 93<sup>rd</sup> Avenue as well as the timing of potential improvements to the road as part of the Capital improvement budget process.

### 2B PUBLIC COMMENT

1. Collette Guyott-Hempel, 9277 Trinity Gardens. Addressed the Council regarding 93<sup>rd</sup> Avenue between Regent/Zane. Stated the half mile stretch was never finished as part of 610 that was promised to be done by the Council at that time in a year and half. Stated there 103 senior citizen apartments opening this month, another 205 more apartments by the end of next year and another 100 townhomes finishing up on Regent and 93<sup>rd</sup> Avenue on the northeast corner. She stated there is a plan for another 100 townhomes on the northwest corner of 93<sup>rd</sup> Avenue and Regent being discussed on Wednesday. She stated it would be so much better to have sidewalks and reduced speeds before they moved in so it was their habit of driving the lower speed.

Stated racing was still going on and pedestrians are increasing in that area. She stated they heard racing at 7:30 a.m., 11 p.m. and at 800 a.m. some Sunday mornings. Because pedestrians were increasing, there was a bus stop at Zane/93<sup>rd</sup> and a half mile stretch that should be easy to walk or ride bikes, but it was not safe. She stated it was the number one way for the north fire station to get to west and did not go on Oak grove. She wanted to know how much money Stonehenge, Ardar Development, Menar homes, the Flex and Grow, Trident and the Speedy Way gas station had paid for road improvements. She wanted to know how much the city had gotten from MSA for the last 20 years that had not been spent on that road.

3A. MOTION WEST-HAFNER, SECOND JACOBSON TO APPROVE THE AGENDA AS SUBMITTED BY THE CITY CLERK WITH REMOVAL OF ITEM 7.2. MOTION PASSED UNANIMOUSLY.

3B PUBLIC PRESENTATIONS/PROCLAMATIONS/RECEIPT OF GENERAL COMMUNICATIONS

3B.1 Introduction of New Employees

Assistant City Manager Wokie Freeman-Gbogba introduced Chante Mitchell and Fumy Pyne-Bailey as new employees to the Administration Department.

Recreation and Parks Director Jody Yungers introduced Jeanine Machan, Steve Thompson, Erin Johnson, Angie Pheneger as new employees to the Recreation and Parks Department.

3B2 Proclamation declaring July 8, 2019 as "Dave Erickson Day" in the city of Brooklyn Park.

3B2 Recreation and Parks Director Jody Yungers briefed the Council on Dave Erikson's efforts and dedication to pickleball. Mayor Lunde read the proclamation declaring July 8, 2019 as "Dave Erickson Day" in the City of Brooklyn Park.

3B3 City Manager Stroebel introduced Dr. Joseph Gaugler, University of Minnesota School of Public Health, and Mr. Gaugler briefed the Council on the Early Memory Loss Project.

4.0 MOTION WEST-HAFNER, SECOND JACOBSON TO APPROVE THE FOLLOWING ADMINISTRATIVE CONSENT ITEMS:

4.1 TO WAIVE THE READING AND ADOPT RESOLUTION #2019-107 TO AUTHORIZE THE POLICE DEPARTMENT TO ENTER INTO A JOINT POWERS AGREEMENT WITH THE MINNESOTA BUREAU OF CRIMINAL APPREHENSION TO ASSIST WITH THE IMPLEMENTATION OF CERTIFICATION OF THE INTEGRATION OF NATIONAL INCIDENT-BASED REPORTING SYSTEM (NIBRS) AND THE SUBMISSION OF CRIME STATISTICS IN THE NIBRS FORMAT AS WELL AS CRIME STATISTICS UNIQUE TO MINNESOTA (MN-NIBRS).

4.2 TO WAIVE THE READING AND ADOPT RESOLUTION #2019-108 TO APPROVE AMENDING THE SUPPLEMENTAL LETTER AGREEMENT WITH SRF CONSULTING GROUP, INC. TO PREPARE FINAL DESIGN PLANS AND SPECIFICATIONS FOR THE TRUNK HIGHWAY 169 / 101<sup>ST</sup> AVENUE INTERCHANGE; CIP 4042.

4.2 TO WAIVE THE READING AND ADOPT RESOLUTION #2019-109 TO APPROVE AMENDING THE SUPPLEMENTAL LETTER AGREEMENT WITH WSB & ASSOCIATES, INC. TO PROVIDE RIGHT OF WAY ACQUISITION SERVICES FOR THE TRUNK HIGHWAY 169 / 101<sup>ST</sup> AVENUE INTERCHANGE; CIP 4042.

4.3 TO WAIVE THE READING AND ADOPT RESOLUTION #2019-110 AUTHORIZING AMENDMENTS TO EXHIBIT A TO RESOLUTION #2019-69.

4.4 TO WAIVE THE READING AND ADOPT RESOLUTION #2019-111 TO AWARD THE BID FOR THE 2019 TRAIL SEALCOAT PROJECT TO ACI ASPHALT & CONCRETE INC.

4.5 TO WAIVE THE READING AND ADOPT RESOLUTION #2019-112 APPROVING

CONSTRUCTION COOPERATIVE AGREEMENT NO. PW 52-04-18 WITH HENNEPIN COUNTY FOR THE RECONSTRUCTION OF CSAH 81 (BOTTINEAU BOULEVARD) FROM NORTH OF 71<sup>st</sup> AVENUE NORTH TO 83<sup>rd</sup> AVENUE NORTH, CITY CIP 4032-19 AND AMEND 2019 STORM SEWER UTILITY BUDGET AND 2019-2023 CIP TO INCLUDE \$365,000 FOR THE STORM SEWER IMPROVEMENTS.

4.6 TO SET A PUBLIC HEARING ON JULY 22, 2019, TO SOLICIT TESTIMONY AND CONSIDER ISSUANCE OF AN OFF-SALE INTOXICATING LIQUOR LICENSE FOR D&A MAIKKULA CORPORATION DBA PIXIE LIQUOR, 1512 BROOKDALE DRIVE NORTH, BROOKLYN PARK.

MOTION PASSED UNANIMOUSLY.

5.1 Public Hearing for Vacation of the Drainage and Utility Easement on Lot 1, Block 2, Mills Addition to Brooklyn Park.

5.1 City Engineer Jesse Struve briefed the Council on the public hearing for Vacation of the Drainage and Utility Easement on Lot 1, Block 2, Mills Addition to Brooklyn Park.

5.1 Mayor Lunde opened the public hearing to consider the Vacation of the Drainage and Utility Easement on Lot 1, Block 2, Mills Addition to Brooklyn Park.

5.1 The following individuals addressed the Council – None.

5.1 Mayor Lunde closed the public hearing and returned the item back to the table for consideration.

5.1 MOTION PARKS, SECOND JACOBSON TO WAIVE THE READING AND ADOPT RESOLUTION #2019-113 VACATING THE DRAINAGE AND UTILITY EASEMENT ON LOT 1, BLOCK 2, MILLS ADDITION TO BROOKLYN PARK. MOTION PASSED UNANIMOUSLY.

6.1 Senior Planner Todd Larson briefed the Council on the Rezoning, Plat, and Site Plan Review #19-111 for a Union Hall at 6648-6700 West Broadway Avenue.

6.1 MOTION LUNDE, SECOND PARKS TO WAIVE THE READING AND ADOPT ON SECOND READING ORDINANCE #2019-1243 AMENDING CHAPTER 152 REZONING PROPERTY FROM DETACHED SINGLE-FAMILY RESIDENTIAL (R3) TO NEIGHBORHOOD RETAIL BUSINESS DISTRICT (B2) SOUTHEAST OF INTERSTATE 94 AND EAST OF WEST BROADWAY. MOTION PASSED UNANIMOUSLY.

6.1 MOTION LUNDE, SECOND WEST-HAFNER TO WAIVE THE READING AND ADOPT RESOLUTION #2019-114 APPROVING FINAL PLAT OF "IBEW ACRES" SUBDIVIDING 7.29 ACRES INTO ONE BUSINESS LOT AND ONE OUTLOT SOUTH OF INTERSTATE 94 AND EAST OF WEST BROADWAY. MOTION PASSED UNANIMOUSLY.

6.1 MOTION LUNDE, SECOND WEST-HAFNER TO WAIVE THE READING AND ADOPT RESOLUTION #2019-115 APPROVING SITE PLAN REVIEW FOR AN OFFICE BUILDING AT 6700 WEST BROADWAY. MOTION PASSED UNANIMOUSLY.

7.1 City Manager Jay Stroebel briefed the Council on the Council Travel Policy.

Council Member Jacobson asked about submitted expense statements, who reviewed them and how it was approved or not approved in the dollar amount the Council Member or Mayor had submitted.

City Manager Stroebel stated Marlene Kryder, Administration, worked with Council prior to any travel once the travel was approved. He stated she worked with them on estimates on travel costs, air fare, hotels and any ancillary expenses that arise on the travel. He stated she also worked with them when they returned to review which meals had been provided for and which got per diem whether it was for breakfast, lunch, or dinner to make sure they were getting what was allowed by city policy.

Council Member Jacobson asked what happened if the per diem was \$25 a meal and spent \$40 on meals.

City Manager Stroebel stated there was a per diem depending on which city the Council Member traveled to and whether they requested that per diem. He stated if it exceeded that amount for a given meal, they were only given the per diem allowed. He stated it was up to the Council Member to pay the difference of what the per diem was and what the City allowed.

Council Member Jacobson stated she had concerns relative to Council Members going on learning trips and doing things during the free time in that city and then taking to social media around that and sharing it. She stated to the tax payers that raised additional questions around if they were paying for it and looked non-essential to the trip the city was paying for. She was wondering if they might look to add something around that.

City Manager Stroebel stated he was not sure if the travel policy was the right place for what was appropriate and not appropriate to be putting on social media. He stated that part of traveling, whether it was for educational purposes, learning and development or advocacy on behalf of the City, like the Cities United event or Washington DC or elsewhere to lobby on behalf of the City. He stated there were times to be able to connecting with colleagues for the city, Minnesota or other places and was up to the discretion of who was traveling to be conscious of how those pictures might be perceived on social media. He stated that whether it was appropriate to be in the travel policy, he wouldn't recommend it.

Council Member Jacobson stated they talked about a report coming back to Council once someone returned from a trip around what the benefit to the City was. She stated she also thought they should look at talking about that ahead of time when the Council voted on it to say what the taxpayers would gain and what might be different from Council attending out of state conferences that they couldn't gain locally, which would have a lesser cost. She thought transparency was important and wanted to make sure those trips taken that they were up front about what it was the taxpayers were gaining. She asked if they should have more around that in the policy.

City Manager Stroebel stated if the Council desired it, they could incorporate that expectation of some sort of a public report back on any travel related to educational purposes or advocacy purposes. He stated it had been the norm for the last couple of years as Council traveled and when they came back provided some sort of summary and ideas that might be a benefit. He

stated it was good practice and encouraged it to continue going forward and they could put that in the policy as an expectation or create it as a standard practice.

Council Member Jacobson stated she was looking for book ends when they approve travel that the Council receive the information and the taxpayers were well aware of what they were gaining by sending the Council Member on a trip. She stated that upon their return, maybe within 30 days of the return, that would be the expectation, and no one was holding anyone accountable to it and owed it to the tax payers.

She stated one of her concerns was if they each got two per term on the Council that if one of them chose not to travel that someone else could say they were going to take that person's trip. She wanted to make a sure that was not part of the vote they took.

City Manager Stroebel stated all travel was subject to Council approval and noted the resolution was typically taken up by the Council at the beginning of the year at its first meeting of the year. He stated it did in a sense provide collective approval of Council Members attending NLC and LMC events. He stated those were instances where that was essentially at least historically, Council had determined those were educational opportunities, benefitted Council and would support Council Members attending those. He stated that on the other types of events, for the last couple of years beyond, those that were approved at beginning of year had been considered on a one to one basis and was currently the way the Council did it. He stated that if the Council wanted to not approve some of those NLC and LMC events, then every Council travel would be considered on a one to one basis, which could be done as well.

Council Member Jacobson stated the statement was added, "when feasible a city vehicle should be considered for in-state transportation needs" and stated now Council Members who were not driving cars on a regular basis somehow were going to have to change insurance and was not sure it would be worth it.

City Manager Stroebel stated he consulted with Operations and Maintenance Director Ruiz and there were situations where staff or elected officials, because of the distance, preferred not to take their personal car. He stated they wanted to make it clear there was an option to take a city vehicle and the only thing needed was a copy of the driver's license. He stated that the vehicle would be covered under the city's insurances policy and wouldn't need an individual's insurance policy. He stated using a city vehicle could be at times economically more feasible.

Council Member Parks agreed with the expectations of discussing it prior to going to the event and when they got back. He stated that the first sentence of the resolution said the Mayor or City Council Members sometimes were required to attend municipal functions and asked if he could give an example of a required function. He stated the policy was a good idea and liked to see those expectations written in there.

City Manager Stroebel stated that Mayor Lunde recently became a member of the LMC Board and there were a certain number of required functions he was expected to go to in a given year. He stated that former Council Member Trepanier had been on the National League Cities Board where there were certain requirements to attend.

Council Member West-Hafner stated she supported some expectations about bringing it to the Council prior to going to an event, to understand it better before voting on it. She stated it

created transparency and then having a report out within a certain period of time was good. She asked about the effective date of the resolution because technically it would be effective as of

January 1 and went back to the beginning of the year since they were modifying the resolution they approved.

City Manager Stroebel stated it would be appropriate now that they were part of the way into the term to apply it given it was Council action to put in place.

Council Member Russell stated they had an expectation contained in the document that when a Council Member or Mayor traveled they came back and gave a report within a specified time period. He asked if it was a public presentation or private presentation and should they specify how the presentation would take place, formally in the chambers or in a work session. He thought they needed to define it and how that was going to be presented to avoid misconceptions. He stated that besides the conferences that were preselected, it was left up to Council Members discretion to decide what other conferences/workshops they attended. He asked if the conference being attended was paid for because some organizations like the Revolution Conference, offered scholarships. He asked it that would be an expectation to give a report if they went on a conference provided by scholarship or only when they attended a conference paid by taxpayers. He stated that needed to be clarified.

City Manager Stroebel stated if they were beyond what was voted on as part of the resolution at the beginning of the year, conferences, educational opportunities, and advocacy opportunities, he stated those would be at the discretion of a Council Member to bring it before the Council and or EDA for consideration.

He stated from time to time scholarships were available, and also, there were times when the Council was asked to speak at a conference and their expenses were covered by the conference. He stated the policy would not apply in those circumstances where scholarships and or their expenses were being paid by others and would not count as one of the Mayor's travel opportunities every year or one of two for a Council Member during the four-year term.

**7.1 MOTION LUNDE, SECOND RUSSELL TO WAIVE THE READING AND ADOPT RESOLUTION #2019-116 AUTHORIZING SUPPLEMENTAL COMPENSATION FOR MAYOR AND COUNCIL MEMBERS WHO ATTEND APPROVED MUNICIPAL FUNCTIONS AND AUTHORIZING CHANGES TO CITY OF BROOKLYN PARK TRAVEL POLICY WITH THE REQUIREMENT OF A RECAP OF THE TRIP WITHIN 45 DAYS.**

Mayor Lunde stated he used 45 days because there were times, just by the Council meeting schedule, 45 days gave a little leeway. He stated that with 30 days, he could think of December and July and things got tight and didn't have a meeting and thought 45 days was more appropriate but it did put the requirement in there.

He stated the travel expenses were public information and people could see what the Council claimed. He stated that most Council Members did not take reimbursement for mileage, where at some cities, the Mayors and Council Members were reimbursed for a lot of it.

He asked if part of a trip was subsidized, where he had a trip to the University of California and they paid for the whole thing and was no expense for the city at all. He stated then he had trips

where some paid 75% and asked if that was considered a full trip or partial trip.

City Manager Stroebel stated that scenario would be up to the discretion of the Council and could vary, like conference fees, hotel covered but not air fare. He stated his goal was to create a policy with some parameters, with the dual goals of providing education and advocacy opportunities, but also mindful using public dollars for trips. He stated it was up to the Council's discretion in scenarios on that. On the partially paid trips, i.e., if it was a \$3,000 trip and \$2,500 was covered and \$500 wasn't, the Council had to make that call if that person wanted to go on their trip.

He stated his goal was to create a policy that provided some parameters but also allowed some flexibility in being conscious of both dual goals of providing for educational opportunities and advocacy where it was important for the community and for Council. He stated he was also being mindful of that they were using public dollars for those trips and without trying to box the Council in, thought it would be up to the Council's discretion in terms of scenarios, where they were talking about a partially paid trip and tried not to be overly prescriptive.

Mayor Lunde stated he wanted people to realize there were many variables but often times the City paid for the trips. He stated that sometimes, like the Cities United paid for trips but the city chose to use that money to bring a youth instead of paying for a Council member. He stated last year in Knoxville they used the money to bring a Brooklyn Park student who was going to be a fellow.

He stated that he always practiced good care on social media and did not want to get involved in monitoring people on social media. He believed in free speech and when in doubt more free speech was the way he approached it. He stated that as elected officials, they were accountable if the public did not like something and had a recourse, called a voting box or vote in another Council Member who will stop something. He stated he didn't want to put anything in policy and just let everybody be free, free to speak and communicate as they felt appropriate.

7.1 Council Member West-Hafner offered a friendly amendment to the motion to add the prior approval or presentation and also the follow up presentation and to be formal in the chambers in front of the cameras so the presentation was on television.

7.1 Mayor Lunde stated the friendly amendment was not accepted and suggested a formal amendment to the motion.

7.1 MOTION WEST-HAFNER, SECOND JACOBSON TO AMEND THE MOTION TO ADD IN A PRIOR FORMAL PRESENTATION AND ALSO A FOLLOW UP FORMAL PRESENTATION TO THE MOTION.

7.1 Mayor Lunde stated the main motion had a post presentation.

7.1 Council Member West-Hafner stated she would amend the motion to add in a prior presentation. Council Member Jacobson seconded the motion.

Council Member Jacobson stated she was talking about the book ends and thought having an explanation of what the taxpayers would gain prior to the approval and what looked different from the trip that wasn't available locally at a lesser cost was critical to her supporting it.

Council Member Russell stated his understanding was that a Council Member did bring information to the Council prior to going on a trip and gave an example when Mayor Lunde went to California and the Mayor brought information about what he was going to do there and asked if that would suffice the Council.

Mayor Lunde stated that was why he put that in the motion so that it was an expectation and would be more formal.

Council Member West-Hafner stated she wanted what Council Member Jacobson said about the book ends, where they could look at it individually and make those decision and seeing it at the end on what the benefit was.

Mayor Lunde stated he could vote for it and wanted to clarify that if there was something, and that happened a couple of times where the Council had to make a snap decision because it was a hearing at the Federal Transportation Advisory Board and would be talking about light rail. He stated the Council would almost have to have an emergency meeting just to approve it. He asked if presenting at the dais would be considered the prior presentation.

Council Member West-Hafner stated yes and it was something out in the open for people in the community could watch and was more of that transparency piece of it.

7.2 THE VOTE ON AMENDMENT TO THE MOTION PASSED UNANIMOUSLY. (Adding the prior presentation to the Council prior to the approval of the trip.)

7.2 THE VOTE ON THE MAIN MOTION PASSED UNANIMOUSLY. (Approve the policy as presented with adding two requirements. One was a trip recap by the traveling Council Member within 45 days of the trip; second, was a prior presentation to the Council prior to approval of the trip.)

7.3 City Engineer Jesse Struve briefed the Council on the installation of a Traffic Signal at the Noble Parkway / 93<sup>rd</sup> Avenue Intersection and retaining Short Elliott Hendrickson, Inc. to prepare plans and specifications.

7.3 MOTION JACOBSON, SECOND RUSSELL TO WAIVE THE READING AND ADOPT RESOLUTION #2019-117 APPROVING THE INSTALLATION OF A TRAFFIC SIGNAL AT THE NOBLE PARKWAY / 93<sup>RD</sup> AVENUE INTERSECTION AND RETAINING SHORT ELLIOTT HENDRICKSON, INC. TO PREPARE PLANS AND SPECIFICATIONS. MOTION PASSED UNANIMOUSLY.

7.4 City Engineer Jesse Struve briefed the Council on the burying of utilities along 101<sup>st</sup> Avenue.

7.4 MOTION LUNDE, SECOND JACOBSON TO WAIVE THE READING AND ADOPT RESOLUTION #2019-118 AUTHORIZING BURYING OF UTILITIES ALONG 101<sup>ST</sup> AVENUE. MOTION PASSED UNANIMOUSLY.

7.5 Recreation and Parks Director Jody Yungers briefed the Council on the Natural Resource Management Plan.

7.5 MOTION RUSSELL, SECOND PARKS TO WAIVE THE READING AND ADOPT

RESOLUTION #2019-119 TO ACCEPT THE NATURAL RESOURCE MANAGEMENT PLAN.  
MOTION PASSED UNANIMOUSLY.

#### 9A COUNCIL MEMBER REPORTS AND ANNOUNCEMENTS

Mayor Lunde thanked the Communications staff and Operations and Maintenance staff for working on the solar project event. He stated today's conference went over very well with the Governor, Congressman Phillips and House Speaker Hortman, other legislative leaders and Council Members in attendance and was a win, win for the city. He stated when people talked about good news and about the leadership that Brooklyn Park was definitely leading the way.

#### 9B CITY MANAGER REPORTS AND ANNOUNCEMENTS

City Manager Stroebel stated the celebration of the work around the solar project was one of those projects that was a win, win, win for the city. He stated it was good for the environment, community, economy and budget. He stated that over the course of 25 years, expected to save \$5.5 million and starting annually with \$60,000 savings the first couple of years. He thanked the Council for their support and hard work the staff put into it and the support from the community and partners, like Apex and others that constructed the project.

Other announcements:

- Famers Market, Wednesday, 2 p.m. to 6 p.m. Zane Sports Park.
- Free summer concert series with seven events and two movies over the next week. On July 11, at the historic Eidem Farm, 7 p.m., the Riddle Brothers concert; on July 16, at the CAC gazebo at 7 p.m., Craig Clark Band.
- Food Trucks. Stated Council, staff and the food truck community had been working hard supporting the food businesses located in the city as they were doing work around the metro cities area, Minnesota and Wisconsin. He stated they were doing additional things to support the food truck community and at the June 27 City Hall on the Go event at Hartkopf Park, 200 people attended and one of the things they heard was that they appreciated the presence of the food trucks.
- The next City Hall on the Go event was July 25 at Northwoods park; August 15, at Norwood park and the food trucks would be at each of those events.
- At the CAC on Tuesdays from 4 p.m. to 8 p.m. July 16, July 30 and August 13, there would food trucks there where people could get something to eat. He thanked the work of the food truck community, Council and staff on trying to make food trucks in the city more accessible and more successful.

ADJOURNMENT – With consensus of the Council, Mayor Lunde adjourned the meeting at 8:43 p.m.

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JEFFREY JONEAL LUNDE, MAYOR

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DEVIN MONTERO, CITY CLERK

# City of Brooklyn Park Request for Council Action

<b>Agenda Item:</b>	4.5	<b>Meeting Date:</b>	July 22, 2019
<b>Agenda Section:</b>	Consent	<b>Originating Department:</b>	Administration
<b>Resolution:</b>	N/A	<b>Prepared By:</b>	Devin Montero, City Clerk
<b>Ordinance:</b>	SECOND READING		
<b>Attachments:</b>	2	<b>Presented By:</b>	Scott Simmons, Chair, Charter Commission
<b>Item:</b>	Second Reading of an Ordinance to Consider the Recommendation of the Brooklyn Park Charter Commission Amending Charter Chapters 2, 3, 4, 5, 6, 7, 8, 12, 13 and 14, and Adding Sections 4.10 and 14.01A of the Home Rule City Charter		

## City Manager's Proposed Action:

MOTION \_\_\_\_\_, SECOND \_\_\_\_\_, TO WAIVE THE READING AND ADOPT ON SECOND READING ORDINANCE 2019-\_\_\_\_\_ AMENDING CHARTER CHAPTERS 2, 3, 4, 5, 6, 7, 8, 12, 13 AND 14, AND ADDING SECTIONS 4.10 AND 14.01A OF THE HOME RULE CITY CHARTER, APPROVING THE SUMMARY OF THE ORDINANCE, AND AUTHORIZING PUBLICATION BY SUMMARY.

## Overview:

In November 2018, the Commissioners discussed the Charter being 50 years old and the many changes over the years for policy reasons. The Commissioners began reviewing the Charter regarding the technological and contemporary municipal usage on the city's website. From November 2018 through May 2019, the commissioners reviewed all chapters and have proposed the attached amendments to the Charter.

At its March 2019 meeting, the Charter Commission received the City Manager Population Report and the Commission began its review of the district populations. The Redistricting Subcommittee met and reviewed data related to the deviations of the districts and reported its findings to the Charter Commission at its meeting on April 10, 2019. As the result of the findings, the Charter Commission considered the population estimates, statistical deviations and unanimously voted to not recommend redistricting to the City Council.

The Subcommittee also presented options to amend Section 2.04 related to the deviation percentages since the Charter was silent on the deviation percentages used between the districts. The Commission's standard practice was to use a five percent deviation. The options presented were to set a 5 percent deviation, 10 percent deviation, or not include a percentage but reword the provision. The Commissioners recommended the city attorney review the options and provide his comments regarding the language.

At its May 8, 2019 meeting, the Charter Commissioners reviewed the city attorney's comments to Section 2.04 and proposed an amendment that did not include a percentage but reworded the provision that accurately stated the legal standard of "one person, one vote" that is applied in redistricting situations.

The Commissioners discussed and reviewed all the banked amendments and approved the amendments to the City Charter that are being presented to the Council for consideration and approval.

The public hearing and first reading was held on June 24, 2019 and passed unanimously by the Council.

The following is a routine timetable:

May 28	Council set the Public Hearing
June 6	Public Hearing Notice and text of proposed ordinance is published

June 24	Public Hearing and First Reading of Ordinance held
July 22	Second Reading of Ordinance held
August 1	Ordinance published in Newspaper
October 29	Ordinance becomes effective (90 days after passage and publication)

The publication must be the exact language the Council will vote on.

**Attachments:**

- 4.5A ORDINANCE
- 4.5B SUMMARY ORDINANCE

ORDINANCE #2019-

ORDINANCE AMENDING CHARTER CHAPTERS 2, 3, 4, 5, 6, 7, 8, 12, 13 AND 14, AND  
ADDING SECTIONS 4.10 AND 14.01A OF THE HOME RULE CITY CHARTER

~~Text with strikeouts is proposed for deletion.~~

Text with underline is proposed for insertion.

The City of Brooklyn Park does ordain:

**Section 1. Chapter 2, Section 2.04 of the City Charter is amended to read as follows:**

SECTION 2.04 DISTRICTS AND REDISTRICTING PROCEDURES

*If the Charter Commission determines that the population within each district is not as equal as practicable in keeping with the one person, one vote concept, as evidenced by the Biennial City Manager's Population Report, the Charter Commission shall provide a Redistricting Report to the City Council.*

~~When the population has deviated from district to district, as evidenced in the Manager's Biennial City Population Report or as determined by the Charter Commission, the Charter Commission shall provide a Redistricting Report to the City Council. The Charter Commission shall submit this report to the Council within 45 days after the release receipt of the Manager's City Population Report. This Redistricting Report, upon its release to the Council, shall be published by the Council in two consecutive issues of the official newspaper of the city and on the city's website. The Council shall consider the report of the Charter Commission and within 45 days of its release receipt enact a redistricting ordinance which shall take effect 30 days after publication. If the Council does not enact by ordinance a plan for redistricting within the specified time, no further remuneration shall be paid to the Mayor or Council until the districts of the city are duly redetermined as required by this Charter.~~

**Section 2. Chapter 3, Sections 3.07 and 3.11 of the City Charter is amended to read as follows:**

SECTION 3.07 SIGNING AND PUBLICATION OF ORDINANCES AND MINUTES

Every ordinance passed by the Council shall be signed by the Mayor or Mayor Pro Tem, and attested to by the City Clerk upon passage thereof and shall be filed, maintained and preserved by the City Clerk. The full text of every ordinance passed by the Council shall be published on the city's website. The city may also publish a summary on the website. The ordinances shall be published once in the official newspaper of the city or, if the Council determines that publication of the title and a summary of an ordinance would clearly inform the public of the intent and effect of the ordinance, the Council may direct that only the title of the ordinance and a summary be published with notice that the full ordinance is on the city's website and a full printed copy of the ordinance is available for inspection by any person during regular office hours in the office of the City Clerk. Prior to the publication of the title and summary, the Council shall approve the text of the summary and determine that it clearly informs the public of the intent and the effect of the ordinance. The publication of the title and summary shall be deemed to fulfill all legal newspaper publication requirements as completely as if the entire ordinance had been published. The city shall not be required to publish the minutes or a summary of the actions in the official newspaper or on the city website but shall mail, at city expense, a copy of the proceedings to any resident upon request.

SECTION 3.11 REVISION AND CODIFICATION OF ORDINANCES

The ordinances of the city shall within two (2) years from the adoption of this Charter, and at intervals thereafter of not more than five (5) years, be revised, rearranged, and codified with such additions and deletions as may be deemed necessary by the Council. Such codification shall be published in book or continuously revised loose-leaf form, electronic format and entire copies or portions thereof made available by the Council, at the office of

the City Clerk for general distribution to the public at a reasonable charge. Such publication shall be a sufficient publication of all of the ordinances contained therein. Notice that copies of the revision and codification of ordinances are available at the office of the City Clerk shall be published on the city website and in the official newspaper for at least two (2) successive weeks. Every book shall contain a printed certificate of the Mayor, attested to by the City Clerk, that the publication is correct and such book so published shall be received in evidence in all courts for the purpose of providing the ordinances therein contained, the same as though the original ordinances were produced in court.

**Section 3. Chapter 4, Section 4.01, 4.02, 4.03, 4.04, 4.06, and 4.07 of the City Charter is amended to read as follows:**

**SECTION 4.01 GENERAL ELECTION LAWS TO APPLY**

Except as hereinafter provided, the general laws of the State of Minnesota pertaining to registration of voters and the conduct of primary, special and general elections shall apply for all municipal elections of such officers as are specified in this Charter. The Council shall through ordinances duly adopted in compliance with such state laws and this Charter, adopt suitable and necessary regulations for the conduct of such elections.

**SECTION 4.02 REGULAR MUNICIPAL ELECTIONS**

A regular municipal election shall be held on the first Tuesday after the first Monday in November of each even numbered year commencing in 1988 at such time, place or places as the City Council may designate by resolution. The Council may divide the city into as many voting precincts as it may ~~from time to time~~ deem necessary. Each district shall constitute at least one voting precinct and no precinct shall be in more than one district. At least fifteen (15) days notice shall be given by the City Clerk of the time and places of holding such election, and of the officers to be elected, by posting a notice thereof in at least one public place in each voting precinct and by publishing a notice thereof at least once in the official newspaper of the city. The city shall maintain a list of all current voting precincts on its website. Uncontrollable circumstances causing failure to give such notice shall not invalidate such election.

**SECTION 4.03 PRIMARY MUNICIPAL ELECTIONS**

The Council shall, whenever there are more than two candidates filing for any city-wide office or for resident Council member of any district, provide through ordinance or resolution for a primary election to be held city wide or in any particular district, and such primary election shall be held on a date not less than 25 days prior to the general election. At least 15 days notice shall be given by the Clerk of the time and places of holding such election, and of the officers to be elected, by posting a notice thereof in at least one public place in each district where the election is held, and by publishing a notice thereof on the city website and at least once in the official newspaper of the city. Uncontrollable circumstances causing failure to give such notice shall not invalidate such election.

**SECTION 4.04 SPECIAL ELECTIONS**

The Council may by resolution order a special election and provide all means for holding such special election, provided that there be published notice of said election on the city website and given in three (3) consecutive weekly issues of the official newspaper of the city, prior to the day of said election. The procedure at such election shall conform as nearly as possible to that prescribed for other municipal elections.

**SECTION 4.06 NOMINATIONS BY PETITION**

All elective officers provided for by this Charter shall be nominated by petition. The name of any qualified voter of the city shall be printed upon the ballot whenever a petition as hereinafter prescribed shall have been filed in his/her behalf with the City Clerk. Such petition shall contain printed names and signatures of at least twenty-five (25) registered voters for a City Council seat and at least seventy five (75) registered voters for a Mayoral seat,

qualified to vote for the office in question. No qualified voter shall sign petitions for more candidates for any office than the number of persons to be chosen for that office at the election; should he/she do so, his/her signatures shall be void as to the petition or petitions last filed. All nominations shall be in the hands of the City Clerk's office by the end of the filing period. A nominating petition for a candidate who will be out of the state during the filing period to submit an affidavit of candidacy along with filing fees and any required petitions may do so during the seven days prior to the candidate's absence. The Clerk shall prepare the ballots with the names of the candidates for an office in a manner to be provided by ordinance. Each petition, when presented, must be accompanied by a \$25 filing fee for a Council seat and a \$75 filing fee for a Mayoral seat, which is non-refundable. (Nomination Petitions and Candidate Packets are only available at the City Manager's Clerk's Office)

#### SECTION 4.07 NOMINATION PETITIONS

Petitions for the nomination of candidates for elective office shall be in writing, signed by the petitioning voters, with the street and number, if there be such, of their respective residences. Each petition may consist of one or more pages ~~papers~~, and the signatures need not all be on the same page ~~paper~~. The nomination petition shall contain only one signature on each designated line and no more than 10 signatures on each side of the page. Each page of the nomination petition shall be in the following form provided by the City Clerk's office. (Nomination Petitions and Candidate Packets are only available at the City Manager's Clerk's Office)

#### NOMINATION PETITION

\_\_\_\_\_, being duly sworn, deposes and says that he/she circulated the foregoing petition containing no more than 10 signatures, and that the signatures appended thereto were made in his/her presence and are the signatures of the persons whose names they purport to be and that such persons signed the petition of their own free will.

#### **Section 4. Chapter 4 is amended to add the following section:**

#### SECTION 4.10 WRITE-IN CANDIDATES

A candidate for any city office who wants write-in votes for the candidate to be counted must file a written request with the filing officer for the office sought no later than the seventh (7<sup>th</sup>) day by 5 p.m. before the general or special municipal election. The city clerk shall provide the form to make the request.

#### **Section 5. Chapter 5, Section 5.03 and 5.06 of the City Charter is amended to read as follows:**

#### SECTION 5.03 EXPENDITURES BY PETITIONERS

No member of any recall committee, no circulator of a signature paper, and no signer of any such paper, or any other person, shall accept or offer any reward, monetary ~~pecuniary~~ or otherwise, for services rendered in connection with the circulation. This shall not prevent the committee from paying for legal advice and from incurring nominal expenses as set forth by ordinance, for stationery, copying, printing, and notarial fees. Any violation of this section is a misdemeanor.

#### SECTION 5.06 ELECTION UNDER RECALL - NOTICE OF ELECTION

Unless the officer whose removal is sought resigns within ten (10) days after ~~receipt~~ by the Council receives of the completed recall petition, the Council shall immediately order a special election in accordance with the special election provisions of this Charter (Section 4.04). The form of the ballot at such election shall be as follows:

In the event that a majority of the voters vote in the affirmative on this question, a vacancy in such office the subject of the recall, shall be declared vacant, and the office shall be filled ~~filed~~ as stated in Section 2.06.

**Section 6. Chapter 6, Sections 6.01, 6.02, 6.03, 6.04, 6.05, 6.07, 6.11, 6.12 and 6.13 of the City Charter is amended to read as follows:**

**SECTION 6.01 POWERS RESERVED BY THE PEOPLE**

The people of the City of Brooklyn Park reserve to themselves the powers, in accordance with the provisions of this Charter, to (1) initiate and adopt any ordinance, except an ordinance relating to the budget or capital programs, the appropriation of money, the levy of taxes, the issuance of bonds, the salaries of city officials or employees, or the zoning of land (“Initiative”); and (2) require any ordinance when passed by the Council except an ordinance relating to the budget or capital programs, the appropriation of money, the levy of taxes, the issuance of bonds, the salaries of city officials or employees, or the zoning of land to be referred to the registered voters for approval or disapproval (“Referendum”). Sections 6.03 through 6.09 govern the Initiative process. Sections 6.10 through 6.14 govern the Referendum process.

**SECTION 6.02 EXPENDITURES BY PETITIONERS**

No member of any initiative or referendum committee, no circulator of a signature paper, and no signer of any such paper, or any other person, shall accept or offer any reward, ~~pecuniary~~ monetary or otherwise, for service rendered in connection with this circulation. This shall not prevent the committee from paying for legal advice and from incurring nominal expenses as set forth by ordinance. Any violation of this provision is a misdemeanor.

**SECTION 6.03 INITIATION OF MEASURES**

~~Any five~~ A minimum of five registered voters may form themselves into a sponsoring committee for the initiation of any ordinance except an ordinance relating to the budget or capital programs, the appropriation of money, the levy of taxes, the issuance of bonds, the salaries of city officials or employees, or the zoning of land. Before circulating any petition the committee shall file a certified copy of its proposed ordinance with the City Clerk together with the names and addresses of the committee members. The committee shall also attach a copy of the certified proposed ordinance to each of the signature papers, together with the committee member’s names and addresses as sponsors. Within 10 working days the City Attorney shall ascertain whether the proposed ordinance properly constitutes an initiative. If the City Attorney finds the petition improper, he/she shall notify one or more of the sponsoring committee of that fact, certifying the reasons for his/her findings. ~~(Sample Forms~~ must be available at the City Manager’s Clerk’s Office).

**SECTION 6.04 FORM OF PETITION AND SIGNATURE PAPERS**

The petition for the adoption of any ordinance shall consist of the ordinance, together with all the signature papers and affidavits attached. Such petition shall not be complete unless signed by a number of registered voters in the City of Brooklyn Park equal to at least 15 percent, of the total number of votes cast in the City of Brooklyn Park at the last Gubernatorial election. All the signatures need not be on one signature paper, but the circulator of every signature paper shall make an affidavit that each signature appended to the paper is the genuine signature of the person whose name it purports to be. Each signature paper shall be in substantially the following form:

~~(Sample Forms~~ must be available at the City Manager’s Clerk’s Office).

**SECTION 6.05 FILING OF PETITION AND ACTION TAKEN**

The committee shall then be given up to thirty days in which to file additional signature papers and to correct the petition in all other particulars. Upon receipt of the corrected petition, the City Clerk will then have up to ten working days to ascertain its validity, and the petitioners can no longer correct errors. If at the end of that period the petition is found to be still insufficient or irregular, the Clerk shall file it in his/her office and shall notify one or more ~~each~~ members of the committee of that fact. The final finding of the insufficiency or irregularity of a petition shall not prejudice the filing of a new petition for the same purpose, nor shall it prevent the Council from referring the ordinance to the voters at the next regular or special election.

## SECTION 6.07 INITIATIVE BALLOTS

The ballots used when voting upon any such proposed ordinance shall state the substance of the ordinance and shall give the voters the opportunity to vote either "Yes" or "No" on the question of adoption. If a majority of the votes on any such ordinance are in favor of it, it shall then become an ordinance of the city. Any number of proposed ordinances may be voted upon at the same election, but the voter shall be allowed to vote for or against each separately. ~~If the city attorney determines there is a conflict in case of inconsistency~~ between two initiated ordinances approved at one election, the one approved by the higher percentage of voters voting on the question shall prevail.

## SECTION 6.11 REFERENDUM PETITION

Any five registered voters may form themselves into a sponsoring committee for the repeal of any ordinance except an ordinance relating to the budget or capital programs, the appropriation of money, the levy of taxes, the issuance of bonds, the salaries of city officials or employees, or the zoning of land. Before circulating any petition the committee shall file a certified copy of the ordinance suggested to be repealed with the City Clerk together with the names and addresses of the committee members. The committee shall also attach a copy of the certified ordinance to each of the signature papers, together with the committee member's names and addresses as sponsors. ~~{Sample Forms must be are available at the City Manager's Clerk's Office}.~~

## SECTION 6.12 FORM OF PETITION AND SIGNATURE PAPERS

The petition for the repeal of any ordinance shall consist of the ordinance, together with all the signature papers and affidavits attached. Such petition shall not be complete unless signed by a number of registered voters in the City equal to at least 15 percent of the total number of votes cast in the City at the last Gubernatorial election. All the signatures need not be on one signature paper, but the circulator of every signature paper shall make an affidavit that each signature appended to the paper is the genuine signature of the person whose name it purports to be. Each signature paper shall be in substantially the following form: ~~{Sample Forms must be are available at the City Manager's Clerk's Office}.~~

## SECTION 6.13 FILING OF PETITION AND ACTION TAKEN

The committee shall then be given up to thirty days in which to file additional signature papers and to correct the petition in all other particulars. Upon receipt of the corrected petition, the City Clerk will then have up to ten working days to ascertain its validity, and the petitioners can no longer correct errors. If at the end of that period the petition is found to be still insufficient or irregular, the Clerk shall file it in his/her office and shall notify one or more ~~each~~ members of the committee of that fact. The final finding of the insufficiency or irregularity of a petition shall not prejudice the filing of a new petition for the same purpose, nor shall it prevent the Council from referring the ordinance to the voters at the next regular or special election.

## **Section 7. Chapter 7, Section 7.01 and 7.06 of the City Charter is amended to read as follows:**

### SECTION 7.01 THE CITY MANAGER

When the office of City Manager is declared vacant, the City Council shall appoint a new City Manager within 180 days. Whenever the office of City Manager is declared vacant, the City Council shall advertise for a new City Manager through appropriate local and national publications and agencies and on the city's website. During any absence or disability of the City Manager, the City Council shall appoint an Acting Manager, properly qualified and capable to perform the duties of City Manager.

### SECTION 7.06 CONTRACTS: HOW LET

Every contract for the purchase of merchandise, materials or equipment, or for any kind of construction work for cities of the second class, shall be let only by the Council upon the recommendation of the City Manager to lowest responsible bidder. Unless the Council shall by an emergency ordinance otherwise provide, the City Manager shall advertise for bids on the city website and by at least one week's published notice in the official legal newspaper of the city on all such contracts as provided by statute. The Council may, however, reject any and all bids. Subject to the provisions of this Charter, the Council may by ordinance adopt further regulations for the making of such bids and the letting of contracts.

**Section 8. Chapter 8, Section 8.04, 8.06 and 8.12 of the City Charter is amended to read as follows:**

**SECTION 8.04 BOARD OF APPEAL AND EQUALIZATION**

Notice of this meeting shall be ~~given~~ posted on the city website and published in at least two (2) publications of the official newspaper, the first of which must be two (2) weeks prior to the meeting. The meeting shall be so conducted as to give interested citizens a reasonable opportunity to be heard.

The Council shall evaluate this information when it sits as a Board of Appeal and Equalization.

**SECTION 8.06 PASSAGE OF THE BUDGET**

Prior to the adoption of the budget and in accordance with State law, notice shall be given on the city website and in the official city newspaper stating the time and place at which the budget will be considered and stating that copies are on file in the City Hall for public inspection. The preliminary budget shall be presented at the first regular monthly meeting of the Council in September and the Council shall hold adjourned meetings from time to time until all the estimates have been considered.

**SECTION 8.12 ACCOUNTS AND REPORTS**

Once each year, on or before March 15, the City Manager shall submit a report containing preliminary financial results of all city funds for the prior year. The Council may at any time, and shall annually, provide for an audit of the city finances by a certified public accountant or by the department of the State authorized to make examinations of the affairs of the municipalities. On or before the first day of June in each year, the City Manager shall prepare and submit to the Council an audited Comprehensive Annual Financial Report covering all City funds for the prior year. The Comprehensive Annual Financial Report shall be prepared according to generally accepted accounting principles and shall be submitted to the Council on or before the date prescribed by State law for this report to be submitted to the State of Minnesota. The Comprehensive Annual Financial Report or a summary thereof shall be published on the city website and in the official newspaper on or before July 30 of each year.

**Section 9. Chapter 12, Section 12.03 of the City Charter is amended to read as follows:**

**SECTION 12.03 PUBLIC HEARING**

Before any franchise ordinance is adopted or any rates, fares, or prices to be charged by a public utility are fixed by the Council, the Council shall hold a public hearing on the matter. Notice of such hearing shall be published on the city website and at least once in the official newspaper not less than ten (10) days prior to the date of the hearing.

**Section 10. Chapter 13, Section 13.07 of the City Charter is amended to read as follows:**

**SECTION 13.07 NOTICE OF PUBLIC HEARINGS**

Notice of public hearings required by this chapter shall be published on the city website and at least once in the official newspaper at least ten (10) days prior to the date of the hearing. Additional notice of such public hearings shall be mailed to subscribers of the utility or given in such manner as the Council may determine.

**Section 11, Chapter 14, of the City Charter is amended to add Section 14.01A as follows:**

SECTION 14.01 OFFICIAL PUBLICATIONS

14.01A WEBSITE

*In addition to and all other publication requirements, information regarding public notices, ordinances, bid solicitation and other city matters required by law shall also be posted on the city's website.*

**Section 12. Chapter 14, Section 14.05 of the City Charter is amended to read as follows:**

SECTION 14.05 OFFICIAL BONDS

The City Manager, the City Clerk, the Director of Finance, and such other officers or employees of the city as may be provided for by ordinance shall each before entering upon the duties of his/her respective office or employment, be covered by a corporate surety bond to the city in such form and in such amount as may be fixed by the Council as security for the faithful performance of his/her official duties and the safekeeping of the public funds. Such bonds may be either individual or blanket bonds ~~in~~ at the discretion of the Council. They shall be approved by the Council and approved as to form by the City Attorney, and filed with the City Clerk. The premiums on the bonds shall be paid by the city.

DEVIN MONTERO  
City Clerk

The City Council Brooklyn Park has determined that pursuant to its City Charter, Ordinance #2019-\_\_\_\_\_ should be published in summary form.

SUMMARY OF ORDINANCE #2019-\_\_\_\_\_

ORDINANCE AMENDING CHARTER CHAPTERS 2, 3, 4, 5, 6, 7, 8, 12, 13 AND 14, AND  
ADDING SECTIONS 4.10 AND 14.01A OF THE HOME RULE CITY CHARTER

Ordinance #2019-\_\_\_\_\_ amends Charter Sections 2.04, Districts and Redistricting Procedures, 3.07, Signing and Publication of Ordinances and Minutes, 3.11, Revision and Codification of Ordinances, 4.01, General Election Laws To Apply, 4.02, Regular Municipal Elections, 4.03, Primary Municipal Elections, 4.04, Special Elections, 4.06, Nominations By Petition, 4.07 Nomination Petitions, 5.03, Expenditures By Petitioners, 5.06 Election Under Recall – Notice of Election, 6.01 Powers Reserved By The People, 6.02 Expenditures By Petitioners, 6.03 Initiation of Measures, 6.04 Form of Petition and Signature Papers, 6.05 Filing of Petition And Action Taken, 6.07 Initiative Ballots, 6.11 Referendum Petition, 6.12, Form of Petition And Signature Papers, 6.13, Filing of Petition And Action Taken, 7.01, The City Manager, 7.06, Contracts: How Let, 8.04 Board of Appeal and Equalization, 8.06, Passage Of The Budget, 8.12, Accounts and Reports, 12.03, Public Hearing, 13.07 Notice of Public Hearings, 14.05, Official Bonds and added Sections 4.10, Write-In Candidates, and 14.01A, Website.

This summary of Ordinance #2019-\_\_\_\_\_ has been approved by the City Council on July 22, 2019. A printed copy of the full text of the ordinance is available for public inspection in the office of the city clerk.

ATTEST:

\_\_\_\_\_  
JEFFREY LUNDE, MAYOR

\_\_\_\_\_  
DEVIN MONTERO, CITY CLERK

Approved as to Form by City Attorney  
Passed on First Reading: 06-24-19  
Passed on Second Reading:  
Summary Published in Official Newspaper:

# City of Brooklyn Park Request for Council Action

<b>Agenda Item:</b>	4.6	<b>Meeting Date:</b>	July 22, 2019
<b>Agenda Section:</b>	Consent	<b>Originating Department:</b>	Community Development Rental and Business Licensing
<b>Resolution:</b>	N/A	<b>Prepared By:</b>	Megan Bookey, Program Assistant III
<b>Ordinance:</b>	N/A		
<b>Attachments:</b>	N/A		
<b>Item:</b>	Approve a Temporary On-Sale Liquor License for St. Gerard's Church for their Corn Fest to be held August 9-10, 2019 at 9600 Regent Avenue North		

## City Manager's Proposed Action:

MOTION \_\_\_\_\_, SECOND \_\_\_\_\_, TO APPROVE A TEMPORARY ON-SALE LIQUOR LICENSE FOR ST. GERARD'S CHURCH FOR THEIR CORN FEST TO BE HELD AUGUST 9-10, 2019 AT 9600 REGENT AVENUE NORTH

## Overview:

The Community Development Department approved the application on June 12, 2019, and the Police Department has completed their investigation of the applicant. There are no known code violations at the property and staff finds no reason that would preclude the issuance of this Temporary On-Sale Liquor license. Their reports are on file in the Licensing Division and are available upon request.

The license must be approved by the State of Minnesota Alcohol and Gambling Enforcement Division once the City of Brooklyn Park has approved the license.

**Primary Issues/Alternatives to Consider:** N/A

**Budgetary/Fiscal Issues:** N/A

**Attachments:** N/A

# City of Brooklyn Park Request for Council Action

<b>Agenda Item:</b>	5.1	<b>Meeting Date:</b>	July 22, 2019
<b>Agenda Section:</b>	Public Hearings	<b>Originating Department:</b>	Community Development
<b>Resolution:</b>	X	<b>Prepared By:</b>	Daniela Lorenz, Business Development Coordinator
<b>Ordinance:</b>	N/A		
<b>Attachments:</b>	1	<b>Presented By:</b>	Daniela Lorenz
<b>Item:</b>	Public Hearing Authorizing the Submittal of an Application to the Minnesota Department of Employment and Economic Development for a Grant under the Minnesota Investment Fund Program		

## City Manager's Proposed Action:

MOTION \_\_\_\_\_, SECOND \_\_\_\_\_, TO WAIVE THE READING AND ADOPT RESOLUTION #2019-\_\_\_\_ AUTHORIZING THE SUBMITTAL OF AN APPLICATION TO THE MINNESOTA DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT FOR A GRANT UNDER THE MINNESOTA INVESTMENT FUND PROGRAM.

## Overview:

In June 2019, AbelConn, owned by parent company Celestica, approached the City of Brooklyn Park to request the submittal of an application to the Minnesota Department of Employment and Economic Development (DEED) for funding through the Minnesota Investment Fund (MIF) program. The resolution being considered authorizes City staff to complete and submit the MIF application to DEED for review and approval. DEED is offering \$700,000 of MIF money to be used to help AbelConn expand their facilities into Brooklyn Park, adding approximately 100 new jobs.

AbelConn specializes in designing, building, and delivering integrated electronic solutions for a variety of industries including aerospace, defense, communications, and other technology driven industries. AbelConn has been located in New Hope, Minn. for more than 50 years, formerly they were called Atrenne. In 2014, they were bought by Celestica, a Canadian based high-tech manufacturer. The merger has allowed AbelConn to expand their global reach and take on new projects, thereby expanding their Minnesota operations.

MIF provides dollars to local units of government who then provide low interest or forgivable loans to help businesses retain and create high-quality jobs with a focus on industrial, manufacturing, and technology-related industries. MIF dollars can be used to assist in the purchase of any fixed assets. In this application, DEED's preliminary approval indicated the award will be structured as a loan, forgivable based on jobs, salary expectations and milestones.

The company plans to invest at least \$4.6 million into expansion of an existing facility in Brooklyn Park. MIF funds will be used to help purchase machinery and equipment and aid in the creation of 100 new jobs over the next two years.

If this resolution is passed, staff will complete the application to DEED, which includes a financial analysis, project background, and preliminary project budget. Once the funds are awarded, staff will work with the State and company to create the necessary legal documents associated with this loan.

**Primary Issues/Alternatives to Consider:**

- **How much money is being requested from DEED?**

The application requests \$700,000 from DEED. The final award amount will be determined after DEED does a more thorough review of the company's financial statements.

- **How will the award be structured?**

Currently, the award is structured as a \$700,000 loan at 3% interest, forgivable after two years (with extension request allowed). The company will no longer be expected to pay back the loans provided it meets all of the agreed upon terms of the loan that will be determined after DEED officially awards the project funds. One of the stated goals of MIF is to create and/or retain jobs in the State of Minnesota. Once the company, City, and State have formally agreed upon the number of jobs to be created at specific wage levels, AbelConn will have two years to comply with an option to extend the compliance period for one year after a public hearing and City approval. If the company is unable to meet stated goals in that time period, they will only be forgiven for the amount of jobs they did create and are expected to partially pay back the loan at full interest. The amount they'll be expected to pay back in the event the stated goals aren't met depends on the number of jobs at specific wage amounts they do not create.

- **Why is the City involved?**

MIF is structured as a pass-through program meaning that the funds are awarded to the City and are then passed on to the company. Once the funds are awarded, the City will enter into a grant and loan agreement with the State, and the company is required to annually report on job creation and salaries. The City will be responsible for submitting an annual report detailing the progress AbelConn has made on its job creation goals, which is completed in partnership with the company.

- **How many jobs have been created by MIF projects in the City?**

The City of Brooklyn Park has been involved in several MIF projects. Most recently projects include Biomerics, Takeda, and Star. Since 2015, MIF has aided companies in the creation and retention of more than 400 jobs all earning at least \$15/hour with benefits.

**Budgetary/Fiscal Issues:**

The administration of this action will use budgeted staff time.

**Attachments:**

5.1A RESOLUTION

RESOLUTION 2019-

RESOLUTION AUTHORIZING THE SUBMITTAL OF AN APPLICATION TO THE MINNESOTA DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT FOR A GRANT UNDER THE MINNESOTA INVESTMENT FUND (MIF) PROGRAM

WHEREAS, the City of Brooklyn Park shall act as the legal sponsor for the project contained in the Minnesota Investment Fund Application to be submitted on or about July 22, 2019, and that Mayor Jeffrey Lunde and City Manager Jay Stroebel are hereby authorized to apply to the Department of Employment and Economic Development for funding of this project on behalf of AbelConn, a Celestica Company; and

WHEREAS, the City of Brooklyn Park has the legal authority to apply for financial assistance, and the institutional, managerial, and financial capability to administer the proposed project; and

WHEREAS, the City of Brooklyn Park has not violated any Federal, State, or local laws pertaining to fraud, bribery, kickbacks, collusion, conflict of interest or other unlawful or corrupt practice; and

WHEREAS, upon approval of its application by the State, the City of Brooklyn Park may enter into a Grant Contract with the State of Minnesota for the approved project, and the City of Brooklyn Park certifies that it will comply with all applicable laws, statutes, regulations and rules as stated in the Grant Contract and described in the Project Compliance Certification of the Application; and

WHEREAS, as applicable, the City of Brooklyn Park has obtained credit reports and credit information on AbelConn. Upon review by the City of Brooklyn Park and Kennedy and Graven, no adverse findings or concerns regarding, but not limited to, tax liens, judgments, court actions, and filings with state, federal and other regulatory agencies were identified. Failure to disclose any such adverse information could result in revocation or other legal action.

NOW, THEREFORE BE IT RESOLVED that Mayor Jeffrey Lunde and City Manager Jay Stroebel or their successors in office, are hereby authorized to execute the Grant Contract and amendments, thereto, as are necessary to implement the project on behalf of the City of Brooklyn Park.

# City of Brooklyn Park Request for Council Action

<b>Agenda Item:</b>	5.2	<b>Meeting Date:</b>	July 22, 2019
<b>Agenda Section:</b>	Public Hearings	<b>Originating Department:</b>	Community Development
<b>Resolution:</b>	N/A	<b>Prepared By:</b>	Megan Bookey, Program Assistant III
<b>Ordinance:</b>	N/A		
<b>Attachments:</b>	N/A	<b>Presented By:</b>	Keith Jullie, Rental and Business Licensing Manager
<b>Item:</b>	Approve an Off-Sale Intoxicating Liquor License for D&A Maikkula Corporation dba Pixie Liquor, 1512 Brookdale Drive North, Brooklyn Park		

## City Manager's Proposed Action:

MOTION \_\_\_\_\_, SECOND \_\_\_\_\_, TO APPROVE AN OFF-SALE INTOXICATING LIQUOR LICENSE FOR D&A MAIKKULA CORPORATION DBA PIXIE LIQUOR, 1512 BROOKDALE DRIVE NORTH, BROOKLYN PARK.

## Overview:

Due to change in ownership, this is a new off-sale intoxicating liquor license for D&A Maikkula Corporation dba Pixie Liquor located at 1512 Brookdale Drive North.

The Community Development Department approved the application on June 28, 2019, and the Police Department has completed their investigation of the new owners. There are currently no known code violations at the property and staff finds no reason that would preclude the issuance of this license.

Their reports are on file in the Rental and Business Licensing Division and are available upon request.

**Primary Issues/Alternatives to Consider:** N/A

**Budgetary/Fiscal Issues:** N/A

**Attachments:** N/A

# City of Brooklyn Park Request for Council Action

<b>Agenda Item:</b>	6.1	<b>Meeting Date:</b>	July 22, 2019
<b>Agenda Section:</b>	Land Use Actions	<b>Originating Department:</b>	Community Development
<b>Resolution:</b>	XX	<b>Prepared By:</b>	Todd A. Larson, Senior Planner
<b>Ordinance:</b>	N/A		
<b>Attachments:</b>	6	<b>Presented By:</b>	Cindy Sherman, Planning Director
<b>Item:</b>	"Edinburgh Plaza" (Landform Professional Services, LLC, Kevin Shay) – Plat #19-112 to Subdivide Existing Edinburgh Plaza into Two Lots: One for McDonalds and One for the Multi-Tenant Retail Building at 1400 through 1480 85 <sup>th</sup> Avenue North		

## City Manager's Proposed Action:

MOTION \_\_\_\_\_, SECOND \_\_\_\_\_, TO WAIVE THE READING AND ADOPT RESOLUTION #2019-\_\_\_\_ APPROVING PRELIMINARY AND FINAL PLAT OF "EDINBURGH PLAZA" SUBDIVIDING 3.82 ACRES INTO TWO BUSINESS LOTS NORTHEAST OF 85<sup>TH</sup> AVENUE AND HIGHWAY 252.

MOTION \_\_\_\_\_, SECOND \_\_\_\_\_, TO WAIVE THE READING AND ADOPT RESOLUTION #2019-\_\_\_\_ APPROVING RESOLUTION ASSIGNING AND REMOVING CONDITIONAL USE PERMITS PREVIOUSLY RECORDED IN THE PLAT OF "EDINBURGH PLAZA."

## Planning Commission Recommendation:

At its meeting on July 10, 2019, the Planning Commission unanimously (8-0) recommended approval of the plat with the conditions that are listed in the attached resolution.

## Overview:

The current property contains two buildings: McDonalds and the Edinburgh Plaza retail building. The franchise owner of McDonalds currently has a land lease with the property owner and would like to purchase the property for a long-term holding. The property is currently unplatted and to subdivide the property requires a plat.

The property has one access on 85<sup>th</sup> Avenue and cross-access easements are in place. Additional easements are necessary for the private utilities (sanitary sewer and water) that cross the property as well as for the walkway that straddles the proposed common property line. These easements must be recorded with the plat. A portion of the private sanitary sewer line is located on the City trail corridor to the north. The applicant has requested an easement for this portion of the line as well.

The site is adjacent to Highway 252 where MNDOT, Hennepin County, and the cities of Brooklyn Park and Brooklyn Center are working on a plan to upgrade the expressway to a grade-separated freeway. MNDOT was provided a set of plans and responded that they have no comments on the proposed plat at this time.

Also attached to the report is a resolution for the City Council to assign the existing conditional use permits that are recorded against the entire property to their correct lots after platting in order to clean up the title.

## Budgetary/Fiscal Issues:

Park dedication will be collected on both parcels as provided for in the City's Subdivision Code (Chapter 151). The current rate is \$8,000 per acre and money collected is deposited into the Open Space Land Acquisition and Development (OSLAD) fund.

**Alternatives to consider:**

1. Approve the plat as recommended by the Planning Commission.
2. Approve the plat with modifications.
3. Deny the plat based on certain findings.

**Attachments:**

- 6.1A RESOLUTION – PLAT
- 6.1B RESOLUTION – CUP
- 6.1C LOCATION MAP
- 6.1D PLANNING AND ZONING INFORMATION
- 6.1E PLANNING COMMISSION MINUTES
- 6.1F PLANS

RESOLUTION #2019-

RESOLUTION APPROVING PRELIMINARY AND FINAL PLAT OF  
“EDINBURGH PLAZA”  
SUBDIVIDING 3.82 ACRES INTO TWO BUSINESS LOTS  
NORTHEAST OF 85<sup>TH</sup> AVENUE AND HIGHWAY 252

Planning Commission File #19-112

WHEREAS, the plat of “Edinburgh Plaza” has been submitted in the manner required for platting of land under the Brooklyn Park Codes and under Chapter 462 of the Minnesota Statutes and all proceedings have been duly had thereunder; and

WHEREAS, said plat is consistent with the Comprehensive Plan and the regulations and requirements of the laws of the State of Minnesota and codes of the City of Brooklyn Park, Chapters 151 and 152.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brooklyn Park, Preliminary and Final Plat Request #19-112 “Edinburgh Plaza” shall be approved subject to the following conditions:

**I. PRELIMINARY PLAT**

**1.00 DRAWINGS**

1.01 Preliminary plans on file in the City Clerk’s office dated 03-XX-2019 for two lots upon compliance with the following requirements:

**2.00 BONDS, ESCROWS AND DIRECT PAYMENTS**

2.01 A developer’s escrow shall be required in the amount of **\$2,000.00** as required by Chapter 152. The developer’s escrow must be posted with the City Treasurer to cover engineering, legal and administrative costs incurred by the City. If this account becomes deficient, it shall be the developer’s responsibility to deposit additional funds. This must be done before final bonding obligations are complete.

2.02 Payment of any special assessments on the property.

**3.00 REQUIRED DOCUMENTS**

3.01 Approval of Title by the City Attorney.

3.02 Easement for private utilities must be reviewed by the City Attorney’s office and recorded with the plat.

3.03 An easement for the existing walkway along the common property line.

3.04 Recording of a resolution assigning the previously-recorded conditional use permit resolutions to their proper parcels.

**4.00 GENERAL CONDITIONS**

4.01 It shall be the developer’s responsibility to keep active and up to date the developer’s contract and financial surety (Letter of Credit, bonds, etc.). These documents must remain active until the developer has been released from any further obligation by City Council motion received in writing from the Engineering Department.

## II. FINAL PLAT

5.01 NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brooklyn Park, Final Plat Request #19-112 "Edinburgh Plaza" shall be approved subject to the following conditions:

- a. Title review by the City Attorney and all conditions therein.
- b. Easement review by the City Engineer and all conditions therein.
- c. Per requirements set forth above or as subsequently amended by motion, approving the preliminary and final plat of "Edinburgh Plaza" which is part of this resolution by reference and is on file and can be examined in the City Clerk's office.
- d. Submission of a letter from the land surveyor or engineer indicating the square footage contained in each lot on the plat, per Section 151.043, Subdivision J, of the City Code.
- e. Submission of a CAD copy of the plat.
- f. Park dedication is required on the amount of \$8,000 per acre. The amounts due are \$9,280.00 (Lot 1) and \$21,360.00 (Lot 2).

BE IT FURTHER RESOLVED that such execution of the certificate upon said plat by the Mayor and City Manager shall be conclusive showing of proper compliance therewith by the sub divider and City officials and shall entitle such plat to be placed on record forthwith without further formality, all in compliance with M.S.A. 462 and the Ordinance of the City.

RESOLUTION #2019-  
RESOLUTION ASSIGNING AND REMOVING  
CONDITIONAL USE PERMITS  
PREVIOUSLY RECORDED IN THE PLAT OF “EDINBURGH PLAZA”

WHEREAS, Edinburg Plaza LLC owns the following property within the City of Brooklyn Park:

*The West half of the South quarter of the Southwest Quarter of the Southwest Quarter, Section 13, Township 119, Range 21, lying Northeasterly and Northerly of the Northerly right-of-way line of MINNESOTA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY PLAT NO. 27-14, Hennepin County, Minnesota*

WHEREAS, the property contains two buildings for business uses; and

WHEREAS, the property has conditional use permits for some of these businesses recorded against it; and

WHEREAS, the Brooklyn Park City Council approved the platting of the property as: EDINBURGH PLAZA, Hennepin County, Minnesota; and

WHEREAS, the legal descriptions used in the conditional use permits are written for the whole property and should be assigned to the proper parcel after platting; and

WHEREAS, the property also contains a conditional use permit that has since expired.

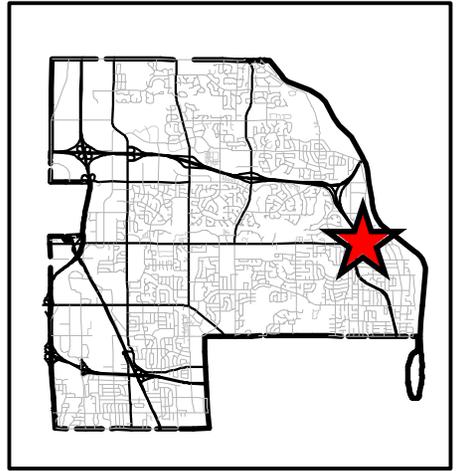
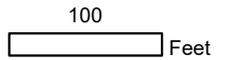
NOW, THEREFORE, BE IT RESOLVED by the Brooklyn Park City Council that the following recorded documents are assigned to the following parcels:

1. Resolution #1987-96 recorded as Document 1841344 for a motor fuel station/convenience store and car was has expired due to discontinuance of use and this Resolution shall be removed from the property.
2. Resolution #2014-55 recorded as Document T05072917 for a conditional use permit for a class-II restaurant and later amended by Resolution #2014-157 recorded as Document T05326978 for expansion of the restaurant and patio shall be assigned to Lot 2, Edinburg Plaza, Hennepin County, Minnesota.
3. Resolution #2011-136 recorded as Document T4883795 for a conditional use permit for site modifications including a second drive-thru lane and interior/exterior remodel shall be assigned to Lot 1, Edinburg Plaza, Hennepin County, Minnesota.

**Plat #19-112 Edinburg Plaza  
1400-1480 85th Ave. N.**



Spring 2018 Air Photo.



Map Date June 21, 2019

Land Use Plan	Community Commercial
Current Zoning	General Business District (B3)
Surrounding Zoning	North – Conservancy District (CD) Edinburgh Channel Trail Corridor East – Multiple-Family Residential (R6) Southeast – Single- and Two-Family Residential (R4) South – Residential Townhome (R4A) West – Highway 252
Neighborhood	River View
Lot Area	
Existing	3.82 acres
Lot 1 (McDonalds)	1.16 acres
Lot 2 (retail building)	2.67 acres
Conforms to:	
Land Use Plan – Yes	
Zoning Code – Yes	
Subdivision Code – Yes	
Variances Needed – None	
Notification	109 Mailed notices (500 feet) Sun-Post legal notices Neighborhood Update Emails – River View and River Park

**Planning Commission Meeting Minutes  
July 10, 2019 – Regular Meeting**

**1. CALL TO ORDER**

The meeting was called to order at 7:00 PM.

**2. ROLL CALL/PLEDGE OF ALLEGIANCE**

Those present were: Commissioners Hanson, Herbers, Husain, Kiekow, Kisch, Mersereau, Morton-Spears, Vosberg; Senior City Planner Larson; Planning Director Sherman.

Those not present were: Commissioner Mohamed; Council Liaison West-Hafner.

**6. PUBLIC HEARING**

- A. Edinburgh Plaza (Landform Professional Services, LLC, Kevin Shay)** – Plat #19-112 to subdivide existing Edinburgh Plaza into two lots – one for McDonalds and one for the multi-tenant retail building at 1400 through 1480 85<sup>th</sup> Ave N.

Senior Planner Larson introduced the application located at the Edinburgh Plaza shopping center which shares a lot with McDonalds. He mentioned that it is uncommon in Brooklyn Park for two separate business buildings to be sharing one parcel. The property is currently unplatted, and McDonalds leases the site. He explained that McDonalds would now like to buy their western portion of the site which requires a subdivision via a plat. He stated the simple plat would create two lots with the shared common line going down the walkway. He indicated that the current property owner will retain ownership of the shopping center that will be located on the eastern portion of the site. Staff recommends approval; although there are some utility easement conditions that need to be addressed as a condition of approval.

Commissioner Chair Hanson opened the public hearing.

Seeing no one approach the podium, Commissioner Chair Hanson closed the public hearing.

Commissioner Kisch asked if one of the utility easements that need to be addressed is the water main that comes off 85<sup>th</sup> Ave that looks to service both properties along the west edge of the second proposed lot.

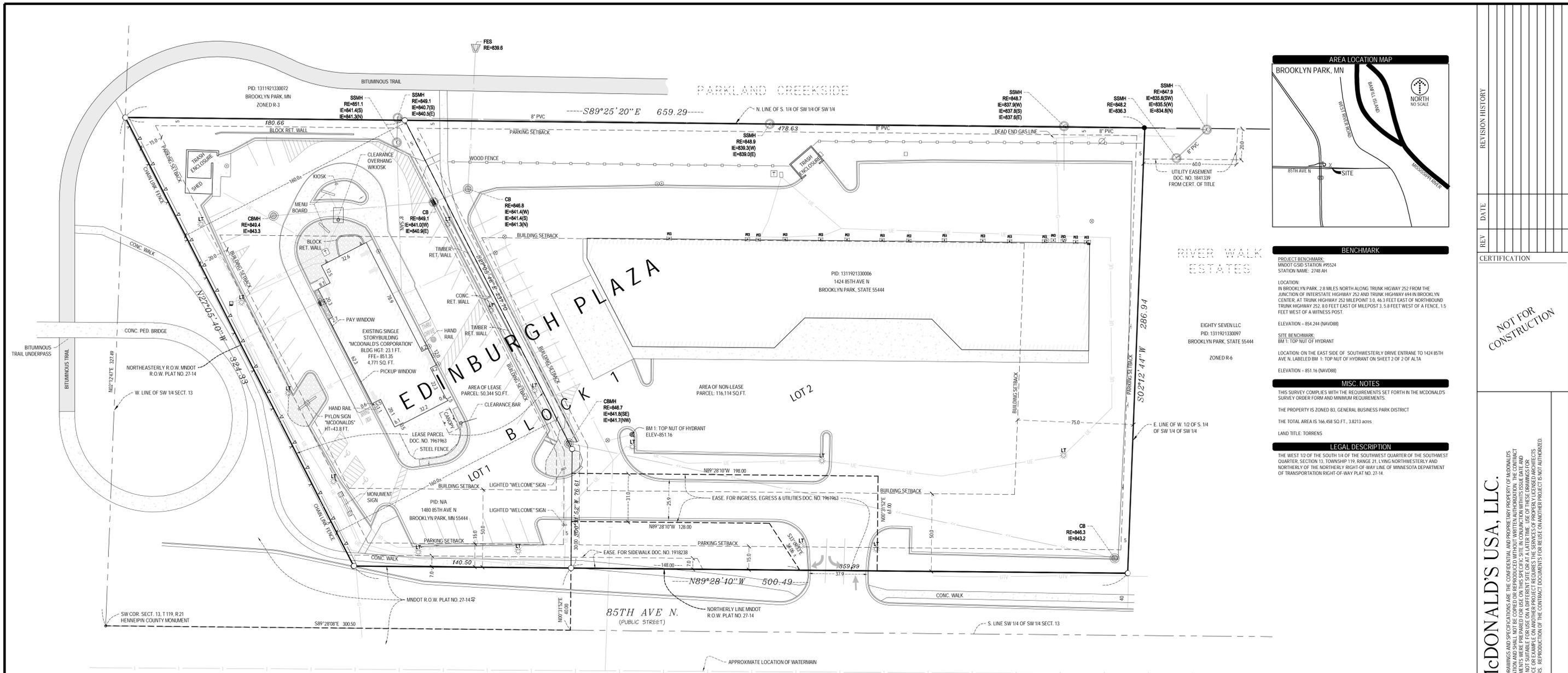
Senior Planner Larson confirmed yes, the water main is a private utility that needs to have the ability to cross both property lines.

Commissioner Kisch stated he is also concerned about the storm water that runs along the same property line, but if that is also included in the easements that are to be addressed he is satisfied.

**MOTION MERSEREAU, SECOND VOSBERG TO RECOMMEND APPROVAL OF PRELIMINARY PLAT #19-112 FOR "EDINBURGH PLAZA" SUBDIVIDING 3.82 ACRES INTO TWO BUSINESS LOTS NORTHEAST OF 85<sup>TH</sup> AVENUE AND HIGHWAY 252, SUBJECT TO CONDITIONS IN THE DRAFT RESOLUTION.**

*MOTION CARRIED UNANIMOUSLY.*

Planning Director Sherman confirmed that the public hearing items will move on to City Council Monday, Jul. 22.



**BENCHMARK**  
PROJECT BENCHMARK:  
MNDOT STATION #9524  
STATION NAME: 2748 AH

LOCATION:  
IN BROOKLYN PARK, 2.8 MILES NORTH ALONG TRUNK HWY 252 FROM THE JUNCTION OF INTERSTATE HIGHWAY 252 AND TRUNK HIGHWAY 694 IN BROOKLYN PARK, AT TRUNK HIGHWAY 252 MILEPOST 3.0, 46.3 FEET EAST OF NORTHBOUND TRUNK HIGHWAY 252, 8.0 FEET EAST OF MILEPOST 3, 5.8 FEET WEST OF A FENCE, 1.5 FEET WEST OF A WITNESS POST.

ELEVATION = 854.244 (NAVD88)

**SITE BENCHMARK:**  
BM 1: TOP NUT OF HYDRANT

LOCATION: ON THE EAST SIDE OF SOUTHWESTERLY DRIVE ENTRANCE TO 1424 85TH AVE N, LABELED BM 1: TOP NUT OF HYDRANT ON SHEET 2 OF 2 OF ALTA

ELEVATION = 851.16 (NAVD88)

**MISC. NOTES**  
THIS SURVEY COMPLIES WITH THE REQUIREMENTS SET FORTH IN THE MCDONALD'S SURVEY ORDER FORM AND MINIMUM REQUIREMENTS.

THE PROPERTY IS ZONED R-3, GENERAL BUSINESS PARK DISTRICT

THE TOTAL AREA IS 166,458 SQ. FT., 3,821.3 acres

LAND TITLE: TORRENS

**LEGAL DESCRIPTION**  
THE WEST 1/2 OF THE SOUTH 1/4 OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, SECTION 13, TOWNSHIP 119, RANGE 21, LYING NORTHWESTERLY AND NORTHERLY OF THE NORTHERLY RIGHT-OF-WAY LINE OF MINNESOTA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY PLAT NO. 27-14.

REV	DATE	REVISION HISTORY

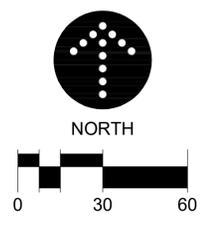
**CERTIFICATION**

NOT FOR CONSTRUCTION

McDONALD'S USA, LLC.

THESE DRAWINGS AND SPECIFICATIONS ARE THE CONFIDENTIAL AND PROPRIETARY PROPERTY OF MCDONALD'S CORPORATION. ANY REPRODUCTION OR USE OF THESE DRAWINGS OR SPECIFICATIONS WITHOUT THE WRITTEN CONSENT OF MCDONALD'S CORPORATION IS STRICTLY PROHIBITED. THESE DRAWINGS AND SPECIFICATIONS ARE NOT TO BE USED FOR ANY OTHER PROJECT WITHOUT THE WRITTEN CONSENT OF MCDONALD'S CORPORATION. ANY REPRODUCTION OR USE OF THESE DRAWINGS OR SPECIFICATIONS FOR ANY OTHER PROJECT WITHOUT THE WRITTEN CONSENT OF MCDONALD'S CORPORATION IS STRICTLY PROHIBITED.

SITE SYMBOLS			
EXISTING	DESCRIPTION	EXISTING	DESCRIPTION
	BUILDING		TRANSFORMER
	CONCRETE SURFACE		UTILITY BOX (TV, TEL, ELEC)
	LANDSCAP ROCK		HAND-HOLE
	PAVING BLOCK / STAMPED CONCRETE		ELECTRIC METER
	CONTOUR		VAULT
	SPOT ELEVATION		TRAFFIC BOX
	CONCRETE CURB		GAS METER
	PEDESTRIAN RAMP		GAS VALVE
	GATE		GUARD POST
	SHRUB		MAILBOX
	TREES		TRAFFIC SIGN
	MAN-HOLE		FLAG POLE
	CATCH BASIN		12" x 14" IRON PIPE MONUMENT WITH PLASTIC CAP #48176 SET
	FLARED END SECTION		IRON MONUMENT FOUND
	OVERFLOW CONTROL STRUCTURE		STORM SEWER
	ROOF DRAIN		SANITARY SEWER
	FIRE HYDRANT		WATER MAIN
	WATER VALVE / CURB STOP		UNDERGROUND GAS MAIN
	FIRE DEPT. CONNECTION		UNDERGROUND TELEPHONE
	LIGHT POLE		OVERHEAD TELEPHONE
	BUILDING ENTRANCE		UNDERGROUND ELECTRIC
	TITLE ITEM NUMBER		OVERHEAD UTILITY
	BEARING & DISTANCE PER PLAT OR DEED		UNDERGROUND FIBER OPTIC
			UNDERGROUND CABLE TV
			RESTRICTED ACCESS



LANDFORM

From Site to Finish

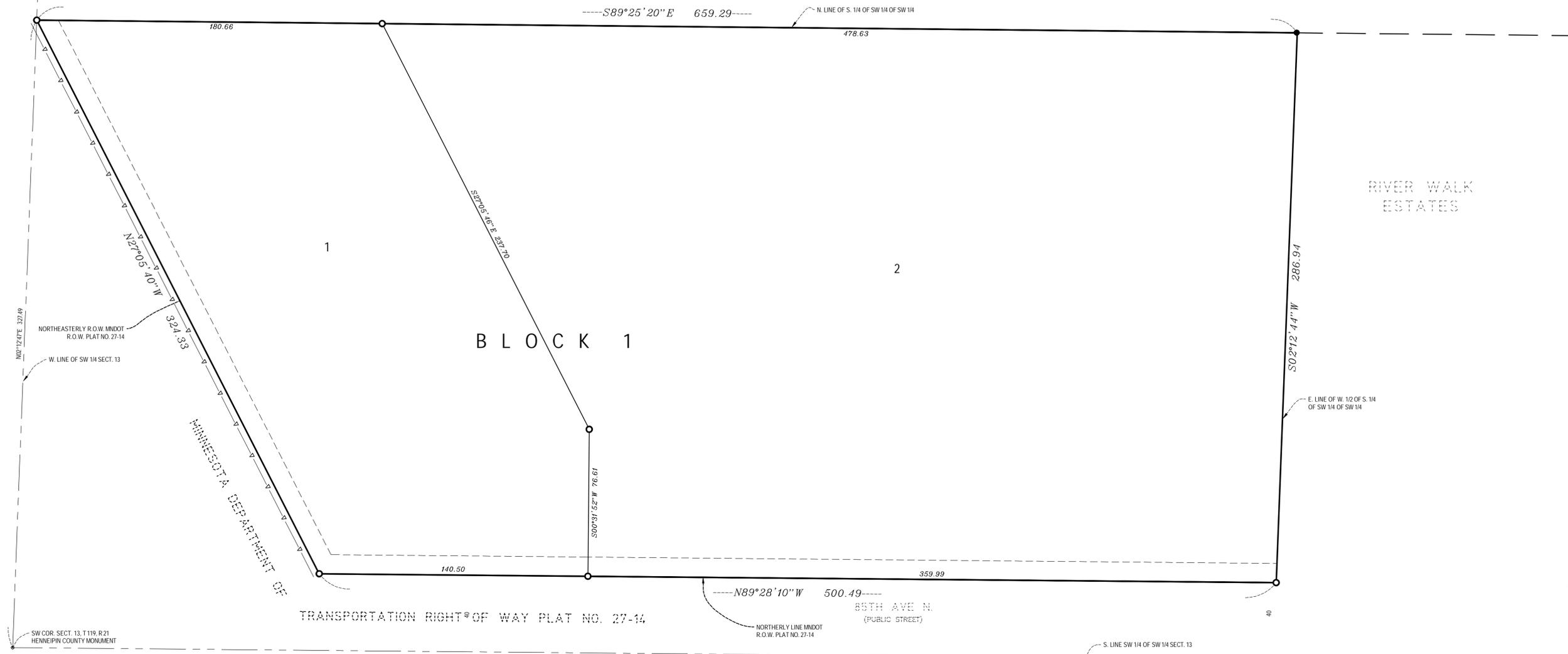
105 South Fifth Avenue    Tel: 612-252-9070  
Suite 513    Fax: 612-252-9077  
Minneapolis, MN 55401    Web: landform.net

STATE: MINNESOTA	CITY: BROOKLYN PARK	STATE NUMBER: 22016
COUNTY: HENNEPIN	STREET ADDRESS: 1460 85TH AVE NO	NATIONAL NUMBER: 05025
REVIEWED BY: LFC/CPM	SHEET NAME: PRELIMINARY PLAT	DATE ISSUED: 05/01/2019
DATE REVIEWED: LFC		
DRAWN BY: DWO		
PHOTO ISSUED:		
FILE NAME: VALTMC434.dwg	SHEET NO: 1 OF 1	PROJECT NO: MCD19434

# EDINBURGH PLAZA

PARKLAND CREEKSIDE

C.R. DOC. NO. \_\_\_\_\_



KNOW ALL PERSONS BY THESE PRESENTS: That Edinburgh Plaza LLC, a Minnesota limited liability company, owner of the following described property situated in the State of Minnesota, County of Hennepin:

The West 1/2 of the South 1/4 of the Southwest Quarter of the Southwest Quarter, Section 13, Township 119, Range 21, lying Northeastly and Northerly of the Northerly right-of-way line of MINNESOTA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY PLAT NO. 27-14.

Has caused the same to be surveyed and platted as EDINBURGH PLAZA and does hereby donate and dedicate to the public for public use the drainage and utility easements as created herewith.

In witness whereof said Edinburgh Plaza LLC, a Minnesota limited liability company, has caused these presents to be signed by its proper officer this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signed: Edinburgh Plaza LLC

STATE OF MINNESOTA  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ of the Edinburgh Plaza LLC, a Minnesota limited liability company.

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Printed Name

Notary Public, \_\_\_\_\_ County, Minnesota  
My commission expires: \_\_\_\_\_

I, Lynn P. Caswell, do hereby certify that this plat was prepared by me or under my direct supervision; that I am a duly Licensed Land Surveyor in the State of Minnesota; that this plat is a correct representation of the boundary survey; that all mathematical data and labels are correctly designated on the plat; that all monuments depicted on the plat have been, or will be correctly set within one year; that all water boundaries and wet lands as defined in Minnesota Statutes, Section 505.01, Subd. 3, as of the date of this certificate are shown and labeled on the plat; and that all public ways are shown and labeled on the plat.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Lynn P. Caswell, Licensed Land Surveyor  
Minnesota License No. 13057

State of Minnesota, County of \_\_\_\_\_

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Lynn P. Caswell.

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Printed Name

Notary Public, \_\_\_\_\_ County, Minnesota  
My commission expires: \_\_\_\_\_

BROOKLYN PARK, MINNESOTA

This plat of EDINBURGH PLAZA was approved and accepted by the City Council of the City of Brooklyn Park, Minnesota, at a regular meeting thereof held this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and said plat is in compliance with the provisions of Minnesota Statutes, Section 505.03, Subd. 2.

City Council, Brooklyn Park, Minnesota

By: \_\_\_\_\_, Mayor

By: \_\_\_\_\_, Manager

SURVEY DIVISION, Hennepin County, Minnesota

Pursuant to MN. STAT. Sec. 383B.565 (1969), this plat has been approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Chris F. Mavis, County Surveyor By \_\_\_\_\_

RESIDENT AND REAL ESTATE SERVICES, Hennepin County, Minnesota

I hereby certify that taxes payable in 20\_\_\_\_ and prior years have been paid for land described on this plat. Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

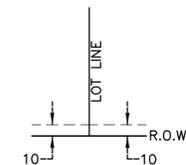
Mark V. Chapin, County Auditor By \_\_\_\_\_ Deputy

REGISTRAR OF TITLES, Hennepin County, Minnesota

I hereby certify that the within plat of EDINBURGH PLAZA was filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

Martin McCormick, Registrar of Titles By \_\_\_\_\_ Deputy

DRAINAGE AND UTILITY  
EASEMENTS ARE SHOWN THUS:  
(Not to Scale)



Being 10 feet in width and adjoining right of way lines as shown on the plat.

- Denotes 1/2 inch iron pipe set with cap #13057
- Denotes 1/2 inch iron pipe found

—△— Denotes Right of Access dedicated to the State of Minnesota.

Bearings shown are based upon the west line of the SW 1/4 of Sec 13, T119, R21 Hennepin County Minnesota which has a bearing of N2°12'47"E.



NORTH  
1 INCH = 50 FEET  
SCALE IN FEET  
0 50 100

LANDFORM  
From Site to Finish

# City of Brooklyn Park Request for Council Action

<b>Agenda Item:</b>	6.2	<b>Meeting Date:</b>	July 22, 2019
<b>Agenda Section:</b>	Land Use Actions	<b>Originating Department:</b>	Community Development
<b>Resolution:</b>	X	<b>Prepared By:</b>	Todd A. Larson, Senior Planner
<b>Ordinance:</b>	N/A		
<b>Attachments:</b>	6	<b>Presented By:</b>	Cindy Sherman, Planning Director
<b>Item:</b>	APC Towers III, LLC – Conditional Use Permit #19-113 to Allow a 125-foot Bell Tower to Support up to Three Wireless Service Providers including T-Mobile at 5840 69 <sup>th</sup> Avenue North		

## City Manager's Proposed Action:

MOTION \_\_\_\_\_, SECOND \_\_\_\_\_, TO WAIVE THE READING AND ADOPT RESOLUTION #2019-\_\_\_\_ APPROVING A CONDITIONAL USE PERMIT FOR A COMMUNICATIONS TOWER AT 5840 69<sup>TH</sup> AVENUE NORTH.

## Planning Commission Recommendation:

At its meeting on July 10, 2019, staff and the applicant presented alternate designs. The Planning Commission recommended approval (7-1) of the conditional use permit of the applicant's original preferred design as long as the color is a brown or beige to match the colors on the Church building instead of the white shown on the rendering.

## Overview:

APC Towers III, LLC would like to construct and operate a 125-foot communications tower on a portion of the Brooklyn Evangelical Lutheran Church property at 5840 69<sup>th</sup> Avenue N. The tower site is off the northeast corner of the parking lot. The tower is being designed to resemble a bell tower, similar to the tower at Discover Church (1400 81<sup>st</sup> Avenue N.), and to accommodate three carriers. The tower requires a conditional use permit (CUP) to be constructed and operate.

The applicant has been looking for tower sites in the southern part of the community around Zane Avenue and 69<sup>th</sup> Avenue. The nearby Zanewood and Northview school sites and a piece of City property were looked at first per City Code requirements, but a lease agreement could not be reached with the School District. The location on the property was selected by the Church so that their needs are met as well as preserves the northern portion for development.

The applicant has provided a photo simulation of what the tower would look like from the intersection of 69<sup>th</sup> Avenue and Zane Avenue. Much of the tower would be obscured by the large trees scattered around the Church property, but still visible. The base of the tower and ground equipment will be screened by a composite privacy fence. The Church building is 40 feet tall and the utility poles along 69<sup>th</sup> Avenue (as seen in the applicant's simulation photos) are approximately 37 feet tall.

The Church property is zoned Detached Single- and Attached Two-Family Residential (R4) where towers have a setback of four times the tower's height. Strict adherence to the four-times rule would not allow a tower of this height as the property is narrower than 500 feet (4x125). City Code allows for the Council to waive this provision when the tower is integrated "into an existing or proposed structure such as a church steeple, light standard, power line support device, or similar structure" (City Code §152.092(M)(1)). In this case, the proposed bell tower design justifies the proposed 100.5-foot setback from the east property line. This tower will be 86.5 feet from the building and 93 feet taller than the Church building.

**Budgetary/Fiscal Issues:**

The tower is located on a tax-exempt parcel. The tower lease value is taxable. The approximate amount of City taxes collected will be \$500 per year.

**Alternatives to consider:**

1. Approve the CUP as recommended by the Planning Commission.
2. Approve the CUP with modifications.
3. Deny the CUP based on certain findings.

**Attachments:**

- 6.2A RESOLUTION
- 6.2B LOCATION MAP
- 6.2C PLANNING AND ZONING INFORMATION
- 6.2D PLANNING COMMISSION MINUTES
- 6.2E APPLICANT'S NARRATIVE
- 6.2F PLANS

RESOLUTION #2019-

RESOLUTION APPROVING A CONDITIONAL USE PERMIT  
FOR A COMMUNICATIONS TOWER  
AT 5840 69<sup>TH</sup> AVENUE NORTH

Planning Commission File #19-113

WHEREAS, Mr. Ryan Streff of Powder River Development, on behalf of APC Towers III, LLC, has made application for a Conditional Use Permit under the provisions of Chapter 152 of the City Code at Brooklyn Evangelical Lutheran Church at 5840 69<sup>th</sup> Avenue North and legally described as:

*The west 465 feet of the South 633 feet of the Southeast quarter of the Southwest quarter, Section 28, Township 119, Range 21, Hennepin County, Minnesota, except roads.*

WHEREAS, the matter has been referred to the Planning Commission who have given their advice and recommendation to the City Council; and

WHEREAS, the effect of the proposed use upon the health, safety and welfare of surrounding lands and existing and anticipated effects on the neighborhood have been considered.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brooklyn Park that a Conditional Use Permit be granted to allow the construction and operation of a 125-foot communications monopole subject to the following conditions:

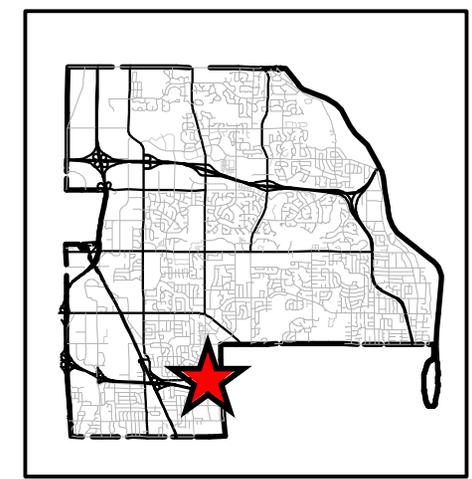
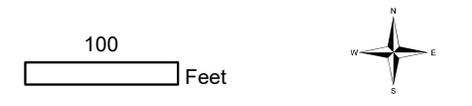
1. Per plans dated revised 06-19-2019 presented to the City Council.
2. The tower must be available to at least two additional communications users.
3. The tower and panel color must be brown or beige for better coordination with the building.
4. The tower shall not be used to display signage.

The petitioner shall be required to record a copy of this resolution with the Hennepin County Recorder and to pay all fees for said recording. Proof of said recording shall be filed promptly with the City. The building permit shall not be issued until or unless the recording is made within one year from the date of this approval.

**Conditional Use Permit #19-113 APC Towers**  
**5840 69th Ave. N.**



Spring 2018 Air Photo.



Map Date June 21, 2019

Land Use Plan	Institutional
Current Zoning	Detached Single- and Attached Two-Family Residential District (R4)
Surrounding Zoning	North – Public Institution (PI) <i>Zanewood School</i> East – Multiple-Family Residential District (R6) <i>Quality Machine of Iowa</i> South – Public Institution (PI) <i>Northview Middle School</i> West – Detached Single-Family Residential District (R3)
Neighborhood	Village Creek
Site Area	5.49 acres
Tower Height	125 feet
Conforms to:	
	Land Use Plan – Yes
	Zoning Code – Yes
	Variances Needed – None
Notification	Proposed Development Sign 50 Mailed Notices (500 feet) Sun-Post Legal Notices Neighborhood Update Email – Hartkopf and Village Creek City Hall on the Go event June 27, 2019



Photo 1. The 75-foot Discover Church bell tower design east of Highway 252 (Google Street View).

Planning Commission Meeting Minutes  
July 10, 2019 – Regular Meeting

## 1. CALL TO ORDER

The meeting was called to order at 7:00 PM.

## 2. ROLL CALL/PLEDGE OF ALLEGIANCE

Those present were: Commissioners Hanson, Herbers, Husain, Kiekow, Kisch, Mersereau, Morton-Spears, Vosberg; Senior City Planner Larson; Planning Director Sherman.

Those not present were: Commissioner Mohamed; Council Liaison West-Hafner.

## 6. PUBLIC HEARING

### B. APC Towers III, LLC (Ryan Streff) – Conditional Use Permit #19-113 to allow a 125-foot bell tower to support up to three wireless service providers including T-Mobile at 5840 69<sup>th</sup> Ave N.

Senior Planner Larson introduced the application for a cell phone tower to be located at Brooklyn Evangelical Lutheran Church. He explained that City Code requires the development of a “search area” which shows where there is a need for towers. He confirmed the applicant did provide a diagram that reflects a need for a tower in the general area of the church. Along with the search area, diagrams are provided to show the levels of strength of the service of existing towers, so APC Towers III is looking to improve service at the spots that have low levels of strength. He stated that some residents did agree that cell service in this area can be challenging when the proposal was discussed at the recent “City Hall on the Go!” meeting last week. He pointed out the location of the tower which would be at the northeast corner of the parking lot in between the house and the church building. The tower would have space for at least three carriers; T-Mobile is the only carrier identified. He explained the original proposal was a tower with three legs in a triangle shape with panels at the top to make it look like a bell tower. He said this would be similar in design to the bell/cell tower at Discover Church at 81<sup>st</sup> and Highway 252. However, the tower at Discover Church is 75-feet tall whereas the proposed tower would be 125-feet tall. He noted that City Code allows for flexibility on tower placement when it is incorporated into something else such as a bell tower or lighting, if it’s not out of character to the surrounding area. City Staff feels that at 125-feet tall and 86 feet away from the church, the bell/cell tower would be out of character. The staff report originally recommended going with a sleek canister style of tower similar to the 125-foot stealth monopole cylinder in Edinbrook Park south of Highway 610. Since the staff report was circulated, it was brought to City Staff’s attention that this style of tower is not compatible with 5G technology. He explained that a more standard style of cell tower found all over Brooklyn Park will accommodate 5G which City Staff finds to be less obtrusive. However, the church prefers something more decorative, and proposed a single pole tower with a shroud over all the equipment at the top. City Staff still finds the second proposal quite tall and large, so a new recommendation is to move the shroud down to a compatible height with the church, around 30 to 40-feet upward, to provide a focal point and aesthetics without reducing functionality. He stated these design measures are suggestions, and members of the church would like to discuss this further with the Commission. Otherwise, City Staff recommends approval of a tower.

Ryan Streff, 2340 River Pointe Circle in Minneapolis, represented APC Towers III, LLC. He reiterated the application is to approve a Conditional Use Permit for a 125-foot telecommunications tower with shrouding at the top. He explained by having this one tower at this particular location would minimize the need for other towers in the area for the identified client, T-Mobile. This tower would take care of a coverage gap identified near 69<sup>th</sup> Ave and Zane Ave N which was highlighted in the included propagation maps. He explained the height of the tower is measured from the ground to the top of the lighting rod. There would be a lease area at the base of the tower of approximately 50 feet by 55 feet, which would accommodate two additional carriers. The tower itself would also have space to accommodate the three carriers with the sections at the top ranging from 10 feet by 10 feet to 10 feet by 14 feet which will house the equipment and antennas. He reiterated that the bell tower

design was what the landowner preferred. After review regulations and reaching a compromise with the City, the applicant would like to blend a standard monopole with shrouding at the top. He believes the shrouding will provide an element that integrates the tower into the existing land use of the church property. It also provides design relief for surrounding properties. He understands there is potential to move the shrouding down to make it into more of a design element, and they are willing to make another rendering reflecting this option. However, in speaking on behalf of the church, they prefer the shrouding to be located at the top of the tower to cover the antennas. He explained the goal of the tower is to ultimately benefit the community with better service coverage.

Commissioner Chair Hanson opened the public hearing.

Gerald Paulson, 6001 69<sup>th</sup> Ave N, stated his opposition to having this cell tower in his residential neighborhood. He believed this to be more suited for a commercial or retail area. He thinks this would be visual pollution and doesn't believe there is a way to hide this through design since it will be as tall as a twelve-story building. He offered he would have less objection if it were only 75-feet tall.

Mike Boyd, 5412 100<sup>th</sup> Lane N, introduced himself as a lifelong member of Brooklyn Lutheran Church. He sympathized with the concerns of Mr. Paulson and clarified that the church did not ask for the cell tower to be 125-feet tall. He explained the church wants to be a good neighbor which is why they have pushed for including design features that would make the tower less visually obtrusive. He explained the church is in the process of selling two-acres on the back lot, so they think a tower that is more attractive will make this land easier to sell. He is the one that proposed a similar design to the bell tower at Discover Church as he used to live next to that tower.

Henry Castellano, 5909 Bethia La N, stated there is already a 125-foot tower on 64<sup>th</sup> and Zane located within a commercial area. He believed that APC Towers is a North Carolina company looking to go from 4G to 5G, and he is concerned about an increase in cancer rates when the frequency waves increase from 6 gigahertz to between 24 and 90 gigahertz. He pointed out that there are a few schools in the surrounding area. He believes this tower is unnecessary at this location. He has lived in the area many years, and he has never heard a complaint about cell service.

Seeing no one else approach the podium, Commissioner Chair Hanson closed the public hearing.

Commissioner Kiekow asked if there will be bells in this tower.

Ryan Streff explained the original proposal did include bells as part of the design, but there are no longer bells in the design that utilizes a shroud.

Commissioner Kiekow asked if engineering studies have been completed on the stability of the structure, particularly its capacity to withstand high winds and tornadoes.

Ryan Streff confirmed yes, all towers of this nature complete a structural analysis which will be provided during the building permit process if this proposal proceeds. He assured the Commission that the structural analysis considers winds and ice loading on the tower.

Commissioner Kiekow asked for clarification if there will be one or three poles.

Ryan Streff explained there will be one pole installed on this particular site that can be shared by three carriers.

Commissioner Kisch pointed out that T-Mobile appears to have the highest elevation of 118 feet. He asked why that height is needed when the third carrier is able to operate at an elevation of 97 feet.

Ryan Streff explained APC is building the tower for T-Mobile knowing there can be other users in the future, and the height is based on T-Mobile's coverage goals for the area. He said the data from the coverage maps show

that the signal at 118 feet provides the best coverage for the area. He stated that going any lower than 118 feet will reduce the coverage for T-Mobile which may lead to a need for additional towers.

Commissioner Kisch urged the applicant to include visual aids for City Council that indicate the impacts to the coverage signal at various heights. He assumed the shrouding element is a RF transparent material that will allow the array to work at the frequencies needed.

Ryan Streff confirmed the shrouding is RF transparent.

Commissioner Kisch stated he is in favor of the shrouding masking the elements that it is meant to rather than it being an arbitrary material placed midway up the pole. He asked City Staff if there is any official platting required given there is a proposed utility and access easement. If so, does the Commission need to take action on a plat or plat language in addition to the CUP.

Senior Planner Larson explained the utility and access easement is a private access easement since the tower is in the middle of private property and the agreement is with a private company. A private agreement doesn't need a plat, it is just a separate document that is recorded with the lease with the county.

Commissioner Kisch clarified that if the property were to ever go up for sale, the private easement would just be documented with the sale.

Senior Planner Larson confirmed that is correct, the private easement will run with the land. He added that past Commissions and City Councils have directed City Staff to maximize cell tower height in the hopes of providing space to as many users as possible with fewer total towers further apart. He noted that 125 feet is the tallest a cell tower can be according to current City Code. He explained that shorter towers don't spread as far or hold as much which means that another tower is required nearby. He stated this is the direction that City Staff provided this applicant and previous applicants as well.

Commissioner Vosberg asked how tall the power lines are in the picture.

Ryan Streff explained that a standard power pole is between 35 – 50 feet, but he did not have the exact measurement on hand.

Commissioner Vosberg stated this tower would be twice as tall as the utility pole.

Ryan Streff confirmed that is correct under the assumption the pole is 50 feet.

Commissioner Vosberg assumed the photo provided isn't relational in regard to what the tower will actually look like, the tower will look substantially taller.

Ryan Streff explained the photo simulation is scaled based on the height measurements of the church facades and the placement of the tower on the parcel. He explained the simulation may not be exact, but he is confident that it is real close to how the tower will look from that particular angle across the street.

Commissioner Vosberg asked to clarify the current proposal is the third design with shrouding.

Ryan Streff confirmed they have moved away from the bell tower design. The applicant and church propose a single pole with the shrouds at the top.

Commissioner Vosberg asked if the concrete base would be white with a silver pole.

Ryan Streff said the white base she is referring to is fencing that will be placed at 8.5 feet around the ground equipment to screen the equipment from the parking lot.

Commissioner Vosberg asked if the shrouding comes in any other designs.

Ryan Streff stated the shrouding can come in various designs and colors, but this is the design that met the needs of both the applicant and the church.

Commissioner Vosberg stated that the tower seems out of place. She understands the want to have taller towers so there are less towers overall, but she wonders if there is a way to bring more architectural design to the tower, so it blends in more with the church if that is the goal. Otherwise, if it isn't going to look like it belongs with the church, it should just look like a tower.

Ryan Streff provided a simulation that included a brown color that would match the church. He said they will be willing to work with a vendor to select a color that will blend with the façade or roofing of the church.

Commissioner Husain asked if the cell tower will be 5G service.

Ryan Streff said T-Mobile will be installing 4G equipment, but there will be space for future upgrades to 5G.

Commissioner Husain asked how many 5G towers are currently in the City.

Senior Planner Larson answered approximately 20 towers, but that is a rough estimate.

Commissioner Herbers asked how many towers in the City are 125 feet.

Senior Planner Larson answered that most of the towers in the City are 125 feet, and there are a few that are taller as they predate the regulations.

Commissioner Herbers asked for the height of the church at its tallest peaks.

Senior Planner Larson said it was somewhere between 31 and 39 feet.

Michael Boyd answered that the tallest peak of the church roof is about 40 feet, and some of the trees on the lot are between 105 to 110 feet tall.

Commissioner Herbers said he would rather see the top shrouded as well, and he sees the benefits of the height being 125 feet instead of reducing the height.

Commissioner Mersereau pointed out that the trees in the simulation photo are without foliage, so she imagined that when the foliage is more grown in the tower will blend in more. She added she prefers the more natural color, and because of the trees she would recommend a darker brown.

Commissioner Morton-Spears said she likes the tower whether it is blue or a more natural color. She said to her it doesn't seem out of place, especially with the use of the crosses. She said driving up to the area, she may have not known there was a church at that location, but with the bell tower it would indicate a church in the area which may bring new members to the church.

Commissioner Chair Hanson stated she lives near the church and drives by about 4 times a day. The last few days she has noticed the foliage of the trees. She agreed with Commissioner Mersereau that there is not as much to worry about when the trees have full foliage. However, she considered that Minnesota does not have full foliage about half the year. She is torn about utilizing a shroud versus having the tower look like a tower. She said the area has a lot of power poles already, so she doesn't feel that a cell phone tower would be out of place. She does feel the height is out of place.

Commissioner Kisch conveyed his belief that the original bell tower design was a better fit for the context of the church. He said he would be more in favor of the bell tower versus the floating shroud. He said if the bell tower design were to move forward he would want additional conditions that the bell tower not turn into signage.

Senior Planner Larson said the tower simply wouldn't meet the Sign Code. Free standing signs are limited to 25 feet in height for a pylon and 15 feet in height for a monument.

Commissioner Kisch prefaced a motion with whatever design drawings show up in the packet for the City Council should align with the actual request.

MOTION KISCH, SECOND HERBERS TO RECOMMEND APPROVAL OF A CONDITIONAL USE PERMIT FOR A 125-FOOT COMMUNICATIONS TOWER AT 5840 69<sup>TH</sup> AVENUE NORTH, SUBJECT TO CONDITIONS IN THE DRAFT RESOLUTION RELATIVE TO THE ELEVATION IN EXHIBIT 4.

Commissioner Mersereau clarified that exhibit 4 is the original bell tower design.

Commissioner Vosberg asked for further clarification.

Commissioner Kisch explained that the motion is to approve the Conditional Use Permit for the design of original bell tower design that was included in the packet.

Commissioner Chair Hanson asked if the color of the bell tower would match brown of the church or the white that is represented in exhibit 4.

Commissioner Kisch urged the applicant to propose a neutral pallet that works within the context of the existing building to tie it in, he believes the white is too stark. He is open to City Council reviewing the material pallet piece knowing that the Commission wants the tower to be contextual to the building, so it feels like it is part of the parcel.

Commissioner Chair Hanson asked for the height of the tower at Discover Church.

Senior Planner Larson reiterated the tower at Discover Church us 75 feet.

*MOTION CARRIED 7-1. COMMISSIONER CHAIR HANSON VOTED NAY.*

## Project Summary

APC Towers is a national tower company that works closely with wireless carriers to further develop the infrastructure needed to maintain, improve and expand their wireless networks to serve your community.

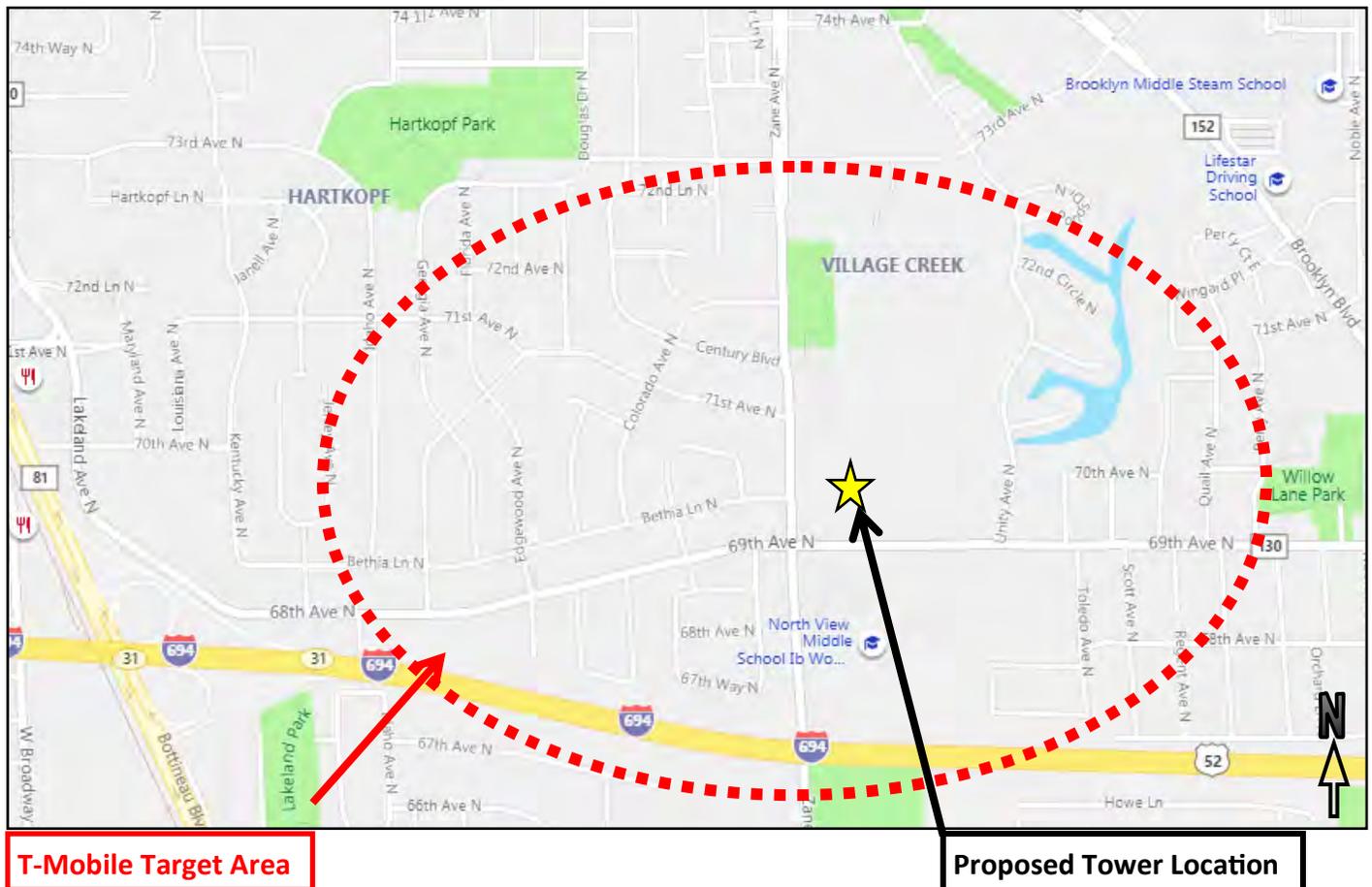
APC Towers is proposing a wireless communications facility at Brooklyn Evangelical Lutheran Church. The facility will consist of a 125' stealth bell tower and a 45' x 50' fenced compound at the base of the bell tower for user equipment within the ground lease area of 50' x 55'. The proposed tower is designed to support up to three wireless service providers. T-Mobile will be the initial service provider, installing their antenna equipment on the proposed tower and ground equipment at the base of the tower. Leaving additional capacity for two future carriers. **Please see the Construction Drawings that have been submitted with the Conditional Use Permit Application for additional details on the proposed bell tower design.**

## Coverage Objective / Search Area

One of today's challenges for all wireless service providers is keeping up with the seemingly exponential demand of consumers for the fastest and most reliable wireless service. The proposed stealth bell tower being considered with this application will simultaneously provide improved coverage and capacity to the surrounding residential area while also relieving capacity at existing T-Mobile sites in the area. The additional capacity of this proposed site will also assist with filling a gap in this service area.

Residents of The Village Creek and Hartkopf neighborhoods of Brooklyn Park and neighboring Brooklyn Center to the east will have improved T-Mobile service. As will the heavily traveled Zane Avenue North, Hennepin County Road 130 (68<sup>th</sup> and 69<sup>th</sup> Avenues North), and Interstate 694. These are main thoroughfares in the area and commonly used by commuters, in addition to local businesses and residents.

## Map 1 - T-Mobile Coverage Objective



## Alternative Location Considerations

The majority of the search area is zoned for residential use both in Brooklyn Park and neighboring Brooklyn Center to the east. In successfully siting a new tower, there are a multitude of considerations which is why a number of parcels were evaluated prior to proceeding with the proposed stealth bell tower at the church property. The zoning ordinance provides guidance for siting new towers on residential parcels.

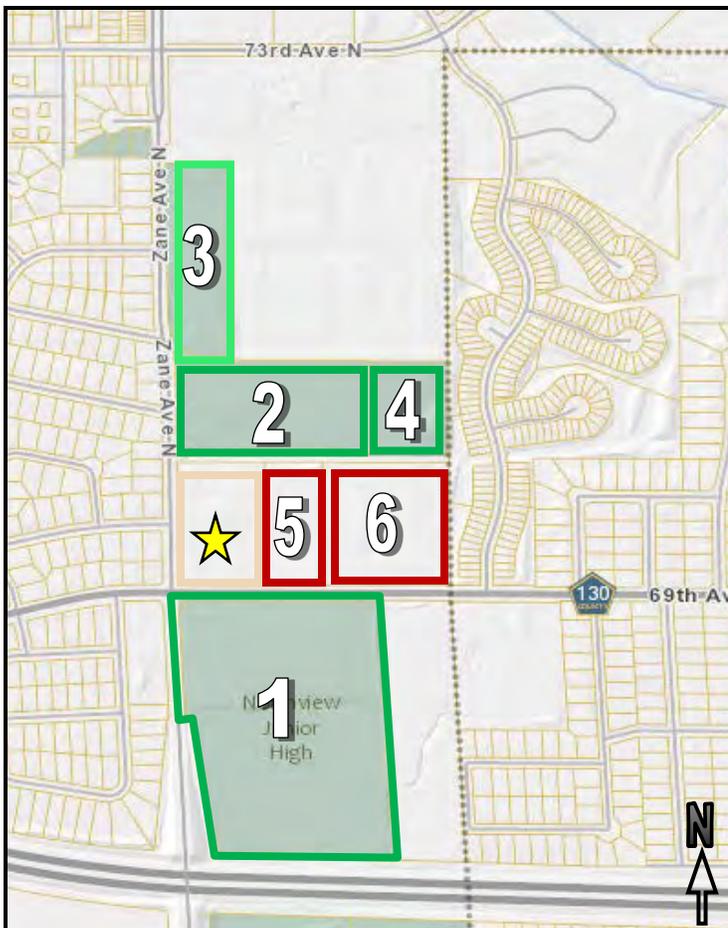
**1. Existing structures.** As of the date of this application, there are no existing structures (rooftops, municipal water towers or existing communications towers) within the 1-mile radius of the proposed tower location available for collocation to meet T-Mobile's coverage objective in this area. Disqualification of existing structures is required pursuant the City of Brooklyn Park's Zoning Ordinance.

**2. Public Institutional Sites.** There are four publicly owned institutions or City owned sites within the target search area for consideration for the proposed tower. **North View Middle School (1)** and **Zanewood Community School (2)**, both owned by Osseo Public Schools, District 279 were approached to discuss the feasibility of a new tower. An agreeable location while still meeting zoning requirements (siting design standards, proposed height and setbacks) and T-Mobile's coverage objective could not be agreed upon with the school district.

The vacant lot owned by the **City of Brooklyn Park (4)**, east of the Zanewood Community School (2) is land-locked with no current public ingress and egress for necessary access and utilities for the proposed tower site. **Zanewood Park (3)**, was not preferred due to vicinity of adjacent residential properties and setback concerns. The parcel owned and occupied by **Quality Machine (5)** and the **Brooks Gardens Apartments &**

**Townhomes (6)** are both zoned R-6, "Multiple Family Residential District", which is not a preferred zoning district for tower siting due to setback and existing residential on the parcel. Additionally they have limited placement options on each parcel needed to meet tower performance standards.

### Map 2 - Alternative Locations



#### Map 2 KEY (Name/Zoning District)

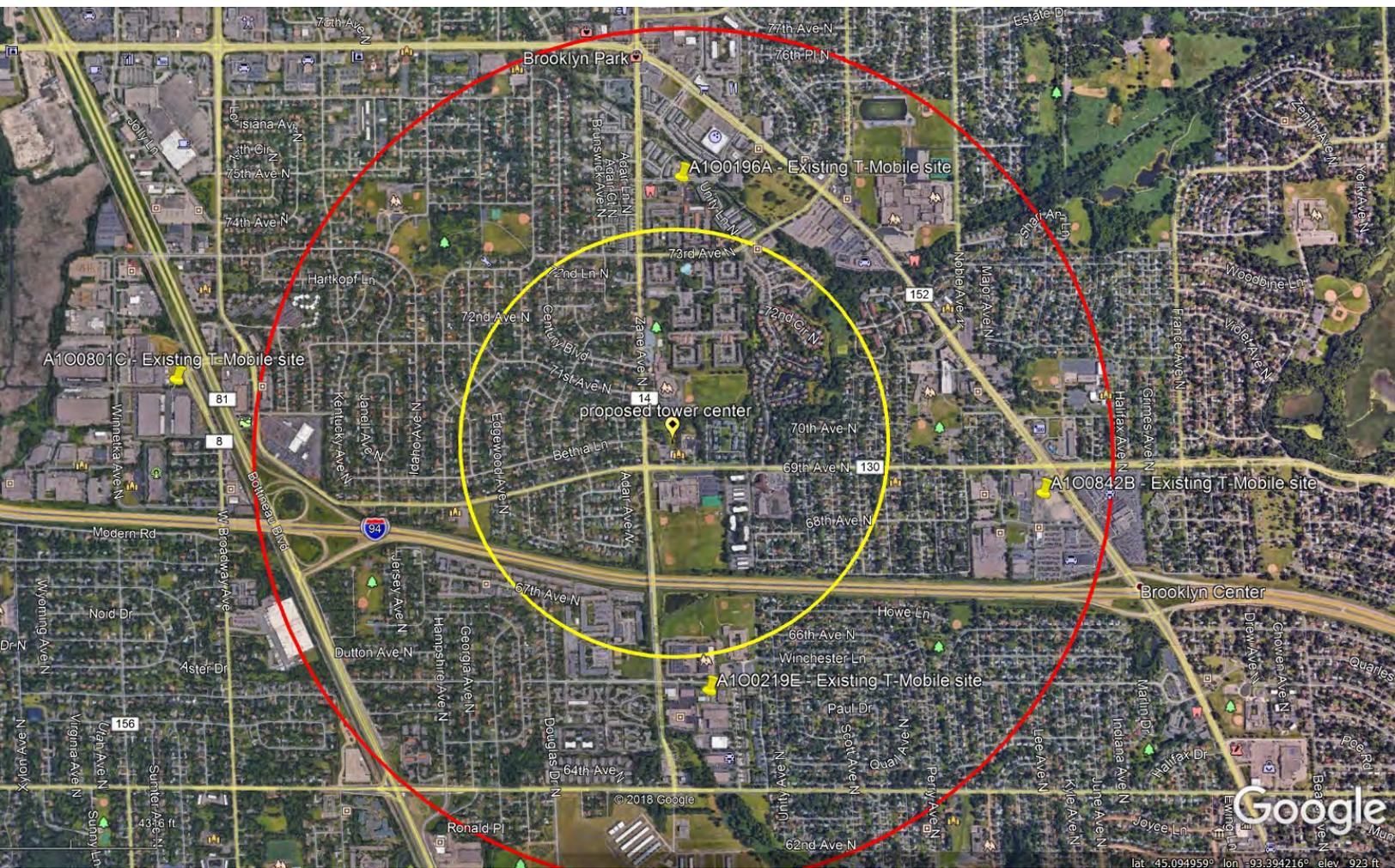
1. Northview Junior High (PI)
2. Zanewood Community School (PI)
3. Zanewood Park (CD)
4. City of Brooklyn Park - Vacant (PI)
5. Quality Machine (R6)
6. Brook Gardens Apartments (R6)
- ★ Proposed Location (R4)

## Exhibit 1: Search Area Map

Yellow Circle: 1/2 Mile Radius

Red Circle: 1 Mile Radius

\*Note the existing T-Mobile sites to North, South, East, and West of the proposed tower site. The proposed stealth bell tower being considered with this application will simultaneously provide improved coverage and capacity to the surrounding residential area while also relieving capacity at existing T-Mobile sites in the area. The addition capacity of this proposed site will also assist with filling a gap in this service area.



**Exhibit 2: Brooklyn Park Zoning Map**



 Neighborhood Info	 R4 - Detached Single and Attached Two-Family Residential
Zoning Code	 R6 - Multiple Family Residential (2.5 and 3 Story)
 R3 - Detached Single-Family Residential (80' Lots)	 CD - Conservancy District

## Exhibit 3: Propagation/Coverage Maps

### Existing Coverage

T-Mobile Midband Coverage (Current)



This is a high usage area.

We are proposing a new site to provide additional capacity to maintain our quality of service for our subscribers

This map shows signal levels as they are today.

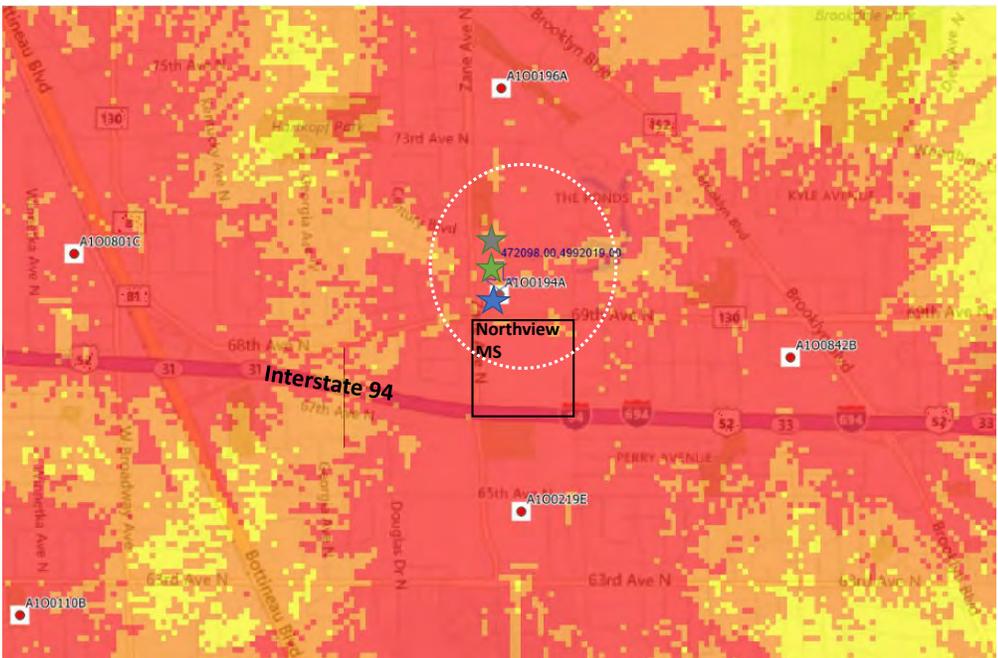
For an effective offload from a capacity site, location is of the utmost importance. It needs to be as centrally located as possible in relation to surrounding existing sites.

- ★ Zanewood Community Center Park
- ★ Zanewood Community School
- ★ Brooklyn Lutheran Church

- T-Mobile Coverage Levels
- Inbuilding Commercial
  - Inbuilding Residential
  - In Car

### Proposed Coverage

T-Mobile Midband Coverage (Proposed)



This map shows the proposed coverage with the T-Mobile preferred location on the North side of the Brooklyn Lutheran Church.

It will provide coverage in our target area, and provide capacity relief to the surrounding sites.

- ★ Zanewood Community Center Park
- ★ Zanewood Community School
- ★ Brooklyn Lutheran Church

- T-Mobile Coverage Levels
- Inbuilding Commercial
  - Inbuilding Residential
  - In Car

**Exhibit 4: Photo Simulation**

AFTER INSTALLMENT  
(Elevation View "B")



BEFORE INSTALLMENT  
(Elevation View "B")



COPYRIGHT © 2019 Powder River Development Services, LLC

**Disclaimer:** This photo simulation is an artist's depiction of a future installation. The actual construction may vary slightly in size, layout, color and texture from this simulation.



**APC SITE #: MN-1618**  
**APC SITE NAME: MINNEAPOLIS**

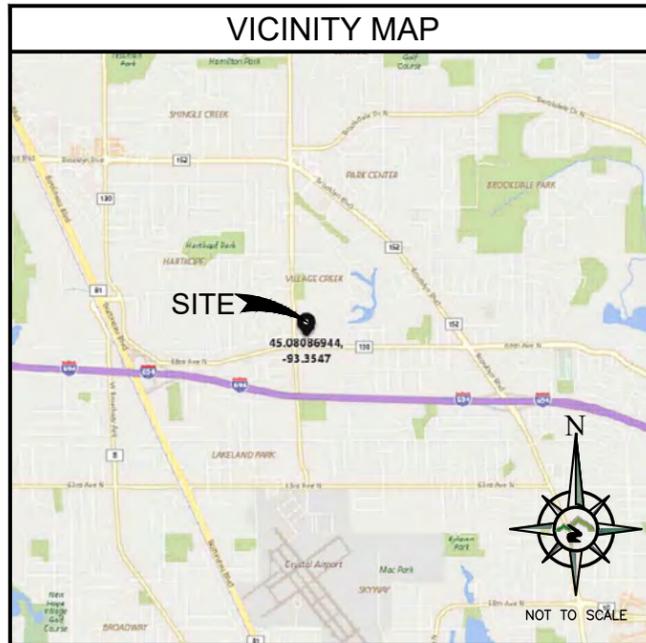
**T-MOBILE #: A100194A**  
**T-MOBILE SITE NAME:**  
**BROOKLYN EV LUTHERAN**

**APC E911 SITE ADDRESS:**  
**5840 69TH AVE N, BROOKLYN PARK, MN 55429**

**122' BELL TOWER**  
**(125' WITH LIGHTNING ROD)**  
**NEW SITE BUILD**

DRAWING INDEX		
SHEET NO.	DESCRIPTION	REV
T-1	TITLE SHEET	3
GN-1	GENERAL NOTES	3
GN-2	GENERAL NOTES	3
GN-3	GENERAL NOTES	3
LS-1	LEGAL DESCRIPTIONS	
LS-2	SITE SURVEY	
C-1.0	OVERALL SITE PLAN	3
C-1.1	COMPOUND PLAN	3
C-1.2	SIGNAGE	3
C-2.0	EQUIPMENT PLAN	3
C-2.1	EQUIPMENT DETAILS	3
C-2.2	EQUIPMENT DETAILS	3
C-3	CONSTRUCTION DETAILS	3
C-4.0	PLATFORM DETAILS	3
C-4.1	PLATFORM DETAILS	3
C-4.2	PLATFORM DETAILS	3
C-4.3	PLATFORM DETAILS	3
C-4.4	PLATFORM DETAILS	3
C-4.5	PLINTH DETAILS	3
C-5.0	ELEVATION & ANTENNA PLAN	3
C-5.1	CABLE & PENDANT SPECIFICATIONS	3
C-6.0	CONSTRUCTION DETAILS	3
C-7.0	FENCE DETAIL	3
C-8.0	OVERALL UTILITY DESIGN	3
C-8.1	UTILITY DESIGN	3
C-9	DIAGRAM DETAILS	3
G-1	GROUNDING PLAN	3
G-2	GROUNDING PLANS	3
G-3	GROUNDING DETAILS	3
G-4	GROUNDING DETAILS	3
G-5	GROUNDING DETAILS	3
G-6	GROUNDING DETAILS	3

SITE INFORMATION	
TOWER OWNER:	APC TOWERS III, LLC
APC E911 SITE ADDRESS:	5840 69TH AVE N BROOKLYN PARK, MN 55429
COUNTY:	RAMSEY
LATITUDE:	45.08086944 (45° 4' 51.133" N)
LONGITUDE:	-93.3547 (93° 21' 16.921" W)
GROUND ELEVATION:	862' AMSL
OCCUPANCY TYPE:	UNMANNED
ZONING JURISDICTION:	HENNEPIN
ZONING CODE:	COMMERCIAL PREFERRED
PARCEL NUMBER:	281192134008
POWER PROVIDER:	XCEL ENERGY (800) 481-4700
TELCO PROVIDER:	XFINTY STORE BY COMCAST (800) 934-6489



CONTACT INFORMATION	
A&E SERVICES:	POWDER RIVER DEVELOPMENT SERVICES, LLC. 408 S. EAGLE ROAD, SUITE 200 EAGLE, ID 83616 CONTACT: JUSTIN STARY PHONE: 402.880.5117 EMAIL: justin.stary@powderriverdev.com
SITE ACQUISITION:	POWDER RIVER DEVELOPMENT SERVICES, LLC. 408 S. EAGLE ROAD, SUITE 200 EAGLE, ID 83616 CONTACT: JAMES RIES PHONE: 612.481.2228 EMAIL: james.ries@powderriverdev.com
APPLICANT:	APC TOWERS III, LLC 8601 SIX FORKS ROAD, SUITE 250 RALEIGH, NC 27615 CONTACT: TAMI LEWALLEN PHONE: 919.670.5202 EMAIL: tlewallen@apctowers.com

DRIVING DIRECTIONS	
DIRECTIONS FROM MINNEAPOLIS INTERNATIONAL AIRPORT	
DEPART AIRPORT TOWARDS GLUMACK DR. TAKE RAMP LEFT FOR MN-5 EAST TOWARD MINNEAPOLIS / ST PAUL. TAKE RAMP RIGHT FOR MN-55 WEST TOWARD MINNEAPOLIS. TAKE RAMP RIGHT AND FOLLOW SIGNS FOR I-35W NORTH. AT EXIT 16A, TAKE RAMP LEFT FOR MN-65 N TOWARD DOWNTOWN EXITS. TAKE RAMP RIGHT AND FOLLOW SIGNS FOR I-94 WEST. ARRIVE AT I-694 W / I-94 W / US-52 N ON THE RIGHT.	

APPLICABLE CODES	
BUILDING CODE 2012 IBC ELECTRICAL CODE 2014 NEC	

APPROVALS	
THE FOLLOWING PARTIES HEREBY APPROVE AND ACCEPT THESE DOCUMENTS AND AUTHORIZE THE SUBCONTRACTOR TO PROCEED WITH THE CONSTRUCTION DESCRIBED HEREIN. ALL DOCUMENTS ARE SUBJECT TO REVIEW BY THE LOCAL BUILDING DEPARTMENT AND MAY IMPOSE CHANGES OR MODIFICATIONS.	
REAL ESTATE: _____	DATE: _____
RF ENGINEER: _____	DATE: _____
CONSTRUCTION MANAGER: _____	DATE: _____
OPERATIONS: _____	DATE: _____
LAND USE PLANNER: _____	DATE: _____
PROPERTY OWNER: _____	DATE: _____

SCOPE OF WORK	
APC TOWERS PROPOSES TO BUILD A NEW WIRELESS FACILITY WITH A NEW 122' BELL TOWER AND 50'X55' FENCED COMPOUND WITHIN A NEW 2,750 S.F. EASEMENT.	
T-MOBILE PROPOSES TO INSTALL THE FOLLOWING IN NEW APC FACILITY:	
TOWER LEVEL: INSTALL (3) SECTOR FRAMES, (6) ANTENNAS, (3) AHLOA, (3) FXFC, (1) HCS 2.0 HYBRID CABLE w/ INTEGRAL PENDANT BREAKOUT.	
GROUND LEVEL: INSTALL (2) FLEXI TABLES, (1) HPL3 CABINET w/ PLINTH, (1) PPC, (1) RAC24, (1) JUNCTION BOX, (1) FSMF, (2) ASIA, (4) ABIA, (1) ASIK, (1) ABIL, (2) AMOB, (1) 8'X8' PLATFORM WITHIN 10'X15' EASEMENT AND INSTALL (1) GENERATOR ON CONCRETE PAD WITHIN EASEMENT.	
THESE DRAWINGS ARE BASED ON RFDS VERSION 0.2 DATED 02/12/2019 GENERAL CONTRACTOR TO VERIFY AND INCORPORATE MOST RECENT VERSION OF THE RFDS WITH T-MOBILE NETWORKS PRIOR TO CONSTRUCTION.	



BUSINESS LICENSE #:		N/A	
REVISIONS			
REV	DATE	DESCRIPTION	INT
3	06/19/19	REVISIONS	JFS
2	05/31/19	REVISIONS	JDB
1	04/15/19	REVISIONS	JDB
0	03/29/19	100% CONSTRUCTION	JDB
A	03/19/19	ISSUED FOR REVIEW 90%	JPN

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED ARCHITECT UNDER THE LAWS OF THE STATE OF MINNESOTA.

SIGNATURE: *Glenn Walker*

NAME: GLENN WALKER

DATE: 06/21/19

LICENSE NUMBER: 55851

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SITE INFORMATION  
**APC SITE #: MN-1618**  
**APC SITE NAME:**  
**MINNEAPOLIS**

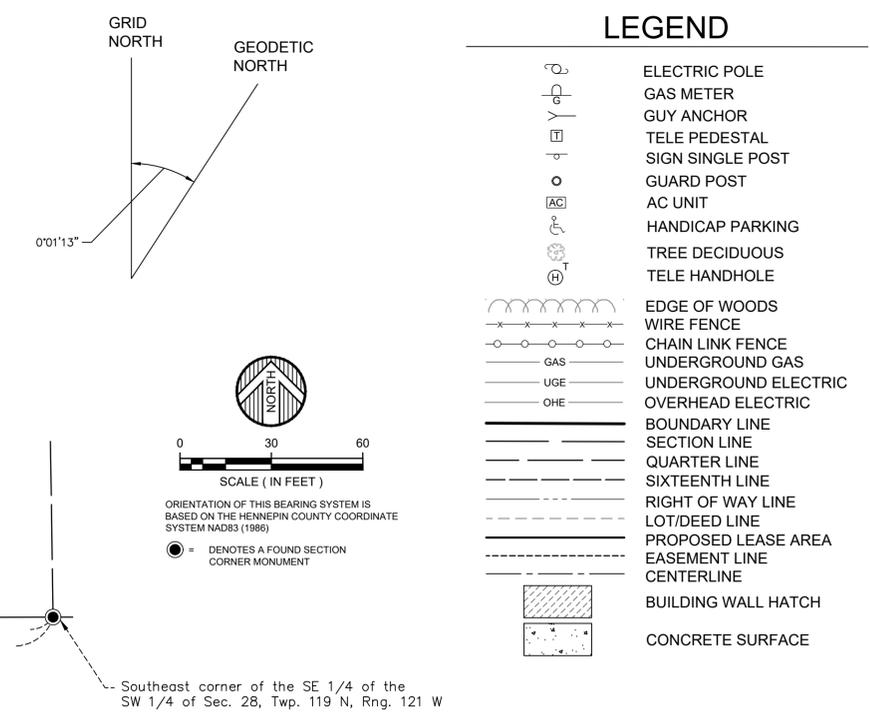
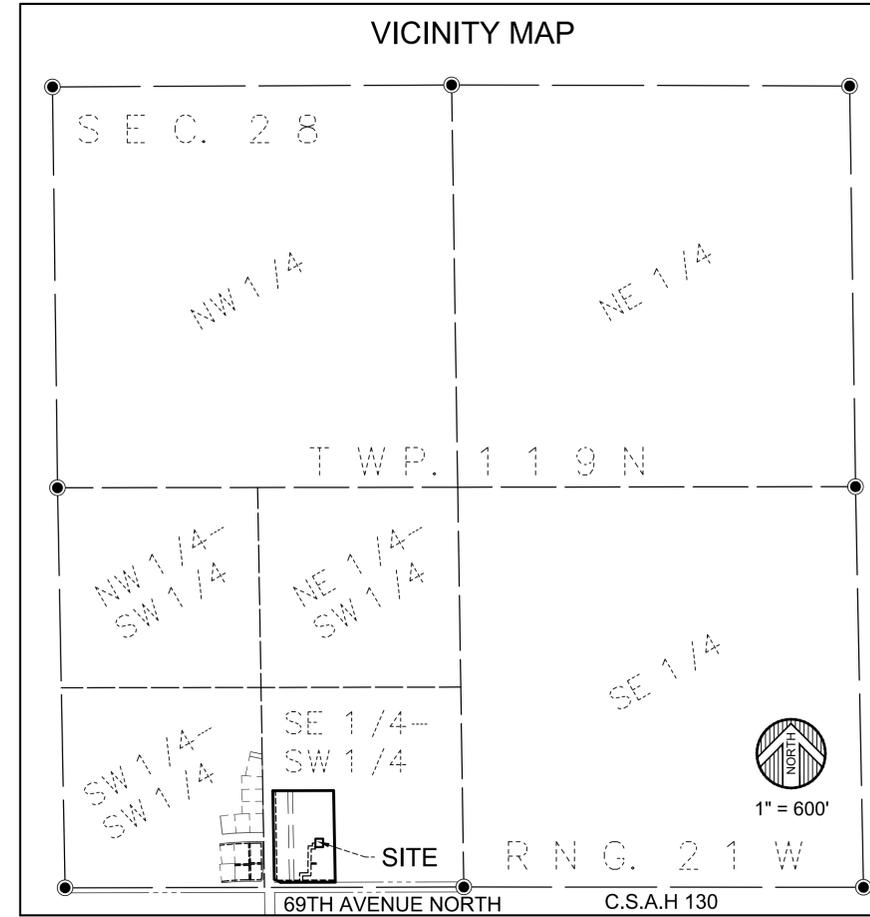
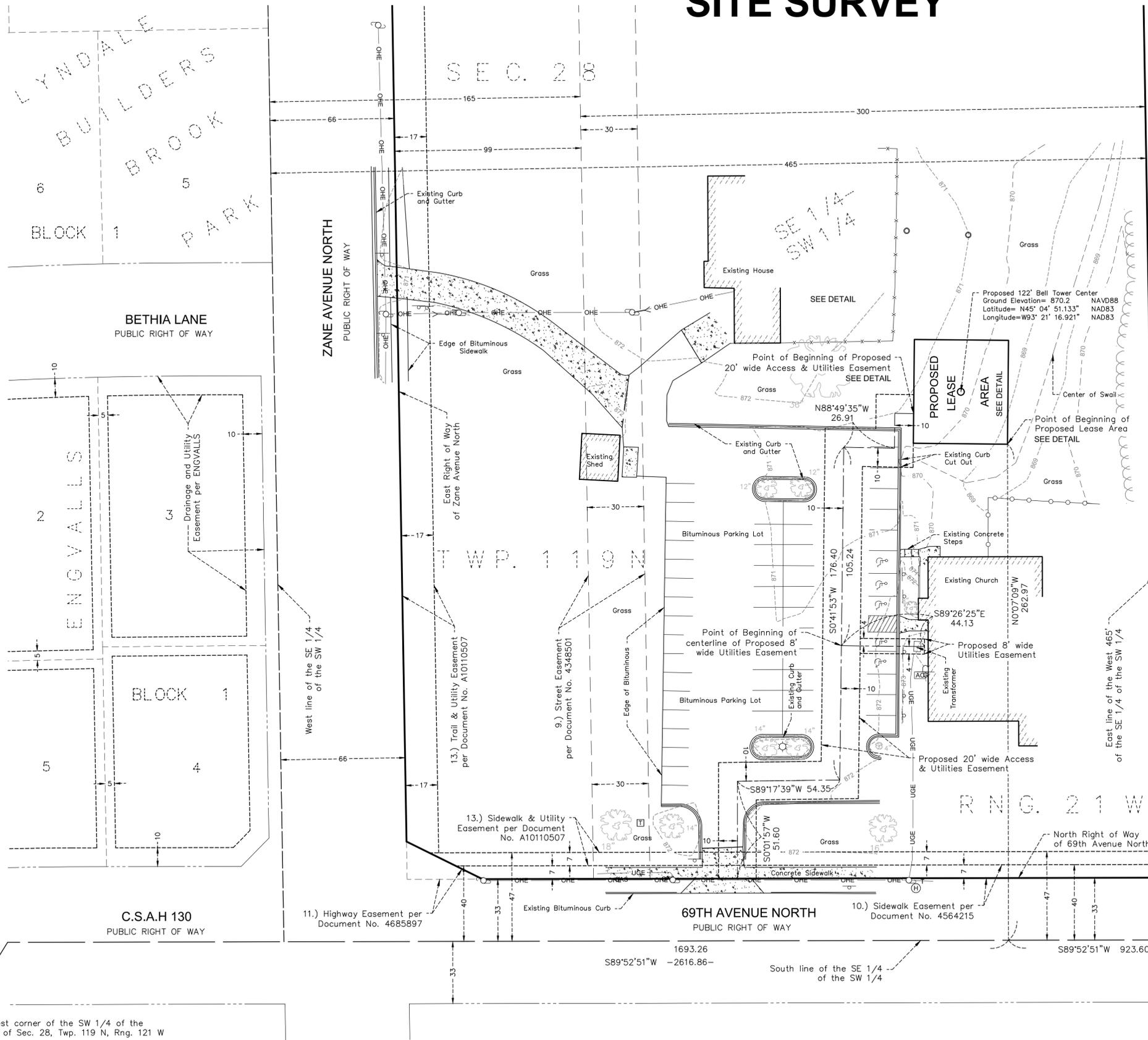
**T-MOBILE # A100194A**  
**T-MOBILE SITE NAME**  
**BROOKLYN EV LUTHERAN**

**APC E911 SITE ADDRESS:**  
**5840 69TH AVE N**  
**BROOKLYN PARK, MN 55429**

SHEET TITLE:  
**TITLE SHEET**

SHEET NUMBER:  
**T-1**

# SITE SURVEY



**SURVEYOR NOTES:**

- Utilities are per observed evidence and markings and per GOPHER STATE ONE CALL, Locate Request Ticket No. 190710254, dated March 18, 2019.
- Due to snow and ice present at the time of the survey, some utilities and improvements may have not been located.

**APC SITE NUMBER: MN-1618**  
**APC SITE NAME: MINNEAPOLIS**  
**APC E911 SITE ADDRESS:**  
 5840 69th Ave. N  
 Brooklyn Park, MN 55249

No.	Date	REVISIONS	By	CHK	APP'D
2	6/3/19	CLIENT COMMENTS	JMB	BTB	BTB
1	4/16/19	CLIENT COMMENTS	JMB	BTB	BTB
FIELD WORK: 3/19/19    CHECKED BY: JBR    DRAWN BY: NTG/JMB					

I HEREBY CERTIFY THAT THIS DOCUMENT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.

SIGNATURE: *Bryan T. Balcome*  
 BRYAN T. BALCOME, L.S.  
 DATE: 3/28/19    LICENSE # 42594

© 2019 WIDSETH SMITH NOLTING

FULL SCALE ON 22"x34" MEDIA  
 HALF SCALE ON 11"x17" MEDIA

**WIDSETH SMITH NOLTING**  
 Engineering | Architecture | Surveying | Environmental

**SHEET 2 OF 2 SHEETS**

0494A2772.000





**ANTENNA CABLE NOTES:**

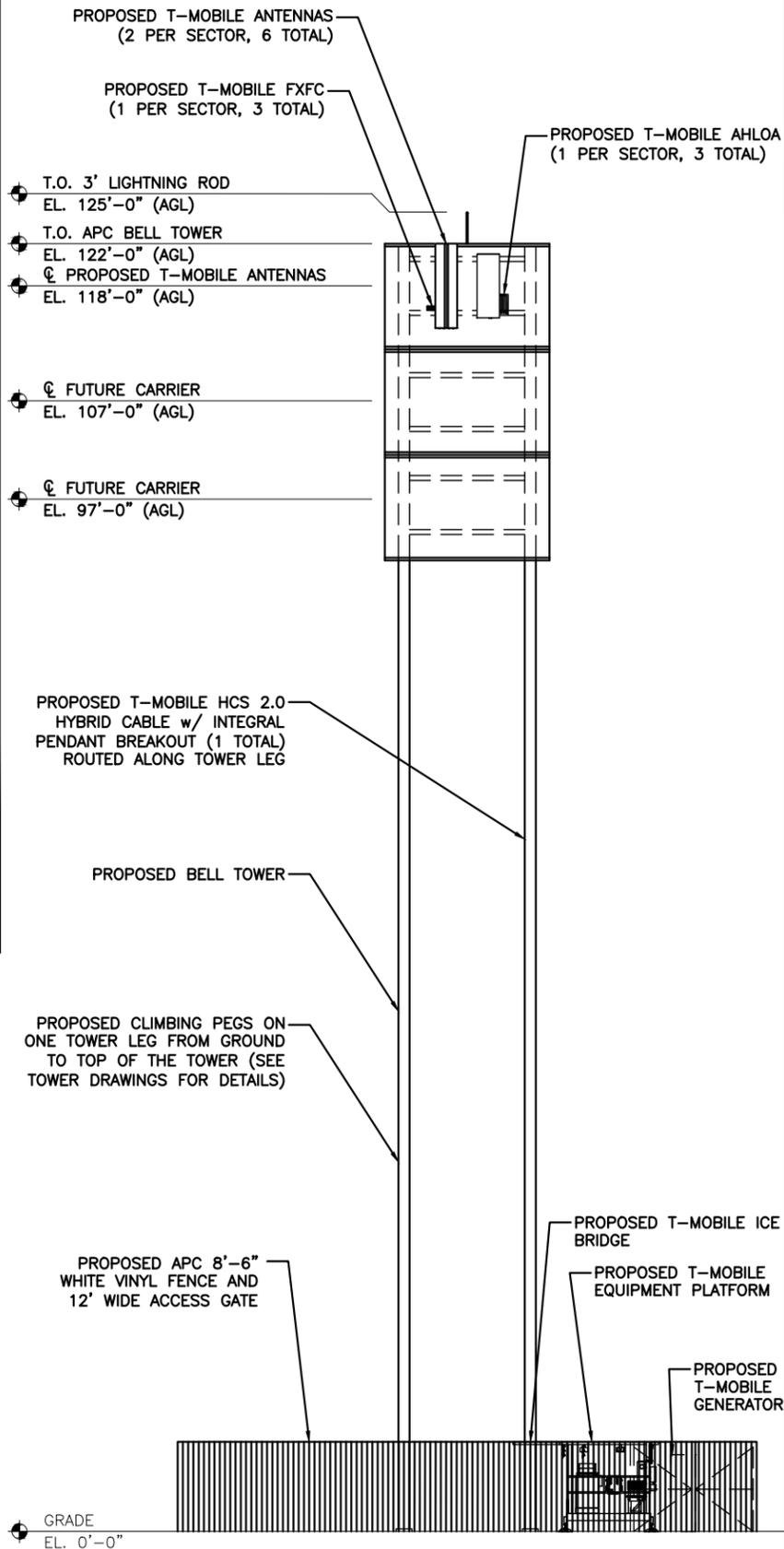
1. ALL FIBER AND DC CABLES SHALL BE SECURED USING ROSENBERGER. COORDINATE WITH CM FOR APPROVED SNAP-IN OR CLAMP HANGERS.
2. WHERE APPLICABLE, VAPOR WRAP WILL BE USED TO SEAL ALL CONNECTIONS.
3. ALL JUMPERS TO THE ANTENNAS FROM THE RRU WILL BE 1/2" JUMPERS AND SHALL NOT EXCEED 15' -0".
4. UPON COMPLETION, PROVIDE A HEIGHT VERIFICATION DEPICTING RAD CENTER AND TOP OF ANTENNA.

**ANTENNA MOUNTING NOTES:**

1. ALL AZIMUTHS ARE TO BE ESTABLISHED CLOCKWISE FROM THE TRUE NORTH HEADING.
2. CONTRACTOR SHALL VERIFY PROPOSED ANTENNA RAD CENTER AND ORIENTATIONS WITH CUSTOMER PRIOR TO INSTALLATION OF ANTENNAS.
3. PRIOR TO ATTACHING ANTENNAS AND MOUNTING SECTIONS, EXISTING TOWER AND TOWER FOUNDATION MUST BE ANALYZED BY A LICENSED STRUCTURAL ENGINEER TO VERIFY TOWER IS CAPABLE OF SUPPORTING THE PROPOSED LOADS. REFER TO STRUCTURAL ANALYSIS BY OTHERS.
4. CONTRACTOR SHALL REFER TO TOWER STRUCTURAL CALCULATIONS FOR ADDITIONAL LOADS. NO ERECTION (WHERE APPLICABLE) OR MODIFICATION OF TOWER SHALL BE MADE WITHOUT APPROVAL OF STRUCTURAL ENGINEER.
5. DESIGN AND CONSTRUCTION OF ANTENNA SUPPORTS SHALL CONFORM TO CURRENT ANSI/TIA/EIA-222-F OR APPLICABLE LOCAL CODES.
6. ALL STEEL MATERIALS SHALL BE GALVANIZED AFTER FABRICATION IN ACCORDANCE WITH ASTM A123, UNLESS NOTED OTHERWISE.
7. ALL BOLTS, ANCHORS AND MISCELLANEOUS HARDWARE SHALL BE GALVANIZED IN ACCORDANCE WITH ASTM A 153 UNLESS NOTED OTHERWISE.
8. DAMAGED GALVANIZED SURFACES SHALL BE REPAIRED BY COLD GALVANIZING IN ACCORDANCE WITH ASTM A780.
9. ALL ANTENNA MOUNTS SHALL BE INSTALLED PER MANUFACTURER SPECIFICATIONS.
10. MINIMUM HORIZONTAL SPACING SHALL BE 3' -0" BETWEEN ANTENNAS.

POWDER RIVER DEVELOPMENT SERVICES, LLC HAS NOT PERFORMED STRUCTURAL ANALYSES FOR THE NEW EQUIPMENT MOUNTS, NOR THE SUPPORTING STRUCTURE, AND ASSUMES NO RESPONSIBILITY FOR ITS ABILITY TO SUPPORT THE PROPOSED MODIFICATIONS. PRIOR TO CONSTRUCTION, STRUCTURAL ANALYSIS (BY OTHERS) SHALL BE PERFORMED FOR ALL TOWERS, ROOFTOPS, FLAGPOLES, LIGHT POLES AND ASSOCIATED EQUIPMENT MOUNTS.

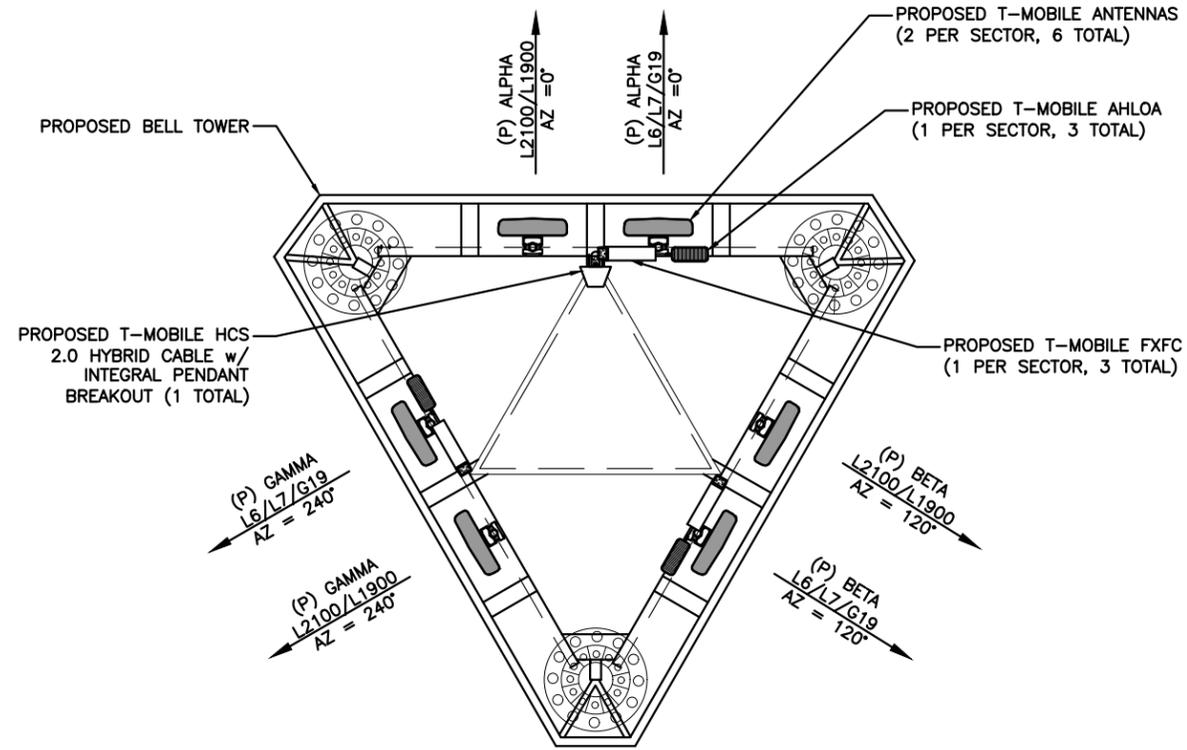
PROPOSED SOUTH ELEVATION



SCALE: 1" = 40' (11x17)

2

PROPOSED ANTENNA LAYOUT



ANTENNA MOUNTING PLAN  
RAD CENTER @ 118'

SECTOR	ANTENNA MODEL	E/M TILT	TECHNOLOGY	AZ	ANTENNA RAD	RRH MODEL
ALPHA	AAFIA	2°/0°	L2100/L1900	0°	118'	
	COMMSCOPE FFHH-65C-R3	2°/0°	L600/L700/G1900	0°	118'	AHLOA/FXFC
BETA	AAFIA	2°/0°	L2100/L1900	120°	118'	
	COMMSCOPE FFHH-65C-R3	2°/0°	L600/L700/G1900	120°	118'	AHLOA/FXFC
GAMMA	AAFIA	2°/0°	L2100/L1900	240°	118'	
	COMMSCOPE FFHH-65C-R3	2°/0°	L600/L700/G1900	240°	118'	AHLOA/FXFC

QTY	CABLE TYPE	CABLE LENGTH
1	HCS 2.0 HYBRID CABLE	200'

SCALE: N.T.S.

1



BUSINESS LICENSE #: N/A

REV	DATE	DESCRIPTION	INT
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A	03/19/19	ISSUED FOR REVIEW 90%	JPN

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SIGNATURE: *Glenn Walker*

NAME: GLENN WALKER

DATE: 06/21/19

LICENSE NUMBER: 55851

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MINNEAPOLIS

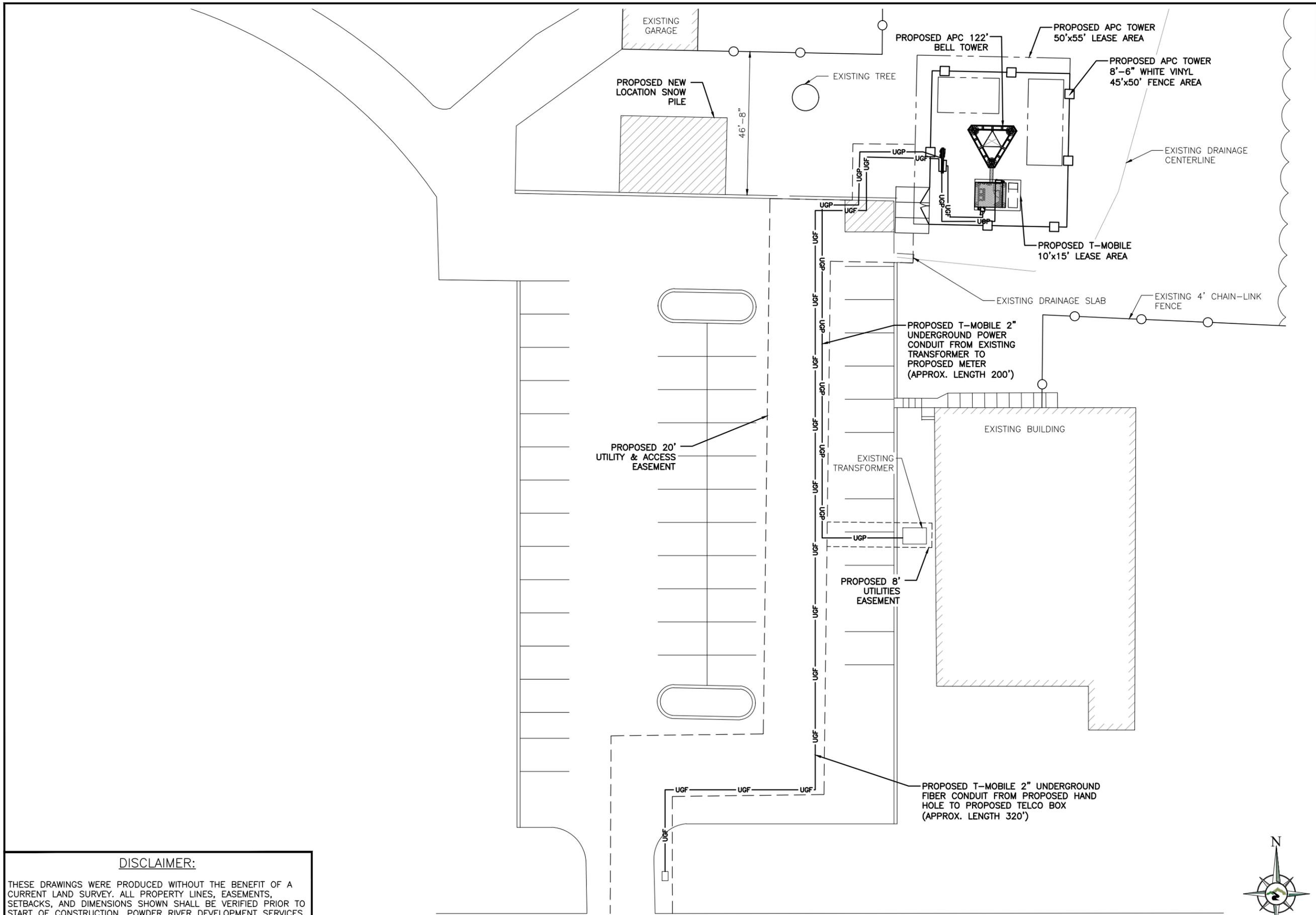
T-MOBILE # A100194A  
T-MOBILE SITE NAME  
BROOKLYN EV LUTHERAN

APC E911 SITE ADDRESS:  
5840 69TH AVE N  
BROOKLYN PARK, MN 55429

SHEET TITLE:  
ELEVATION &  
ANTENNA PLAN

SHEET NUMBER:

C-5.0



TOWER OWNER

TENANT ON APC TOWER

POWDER RIVER  
 Development Services, LLC

BUSINESS LICENSE #: N/A

REVISIONS			
REV	DATE	DESCRIPTION	INT
3	06/19/19	REVISIONS	JFS
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NAME: GLENN WALKER

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SITE INFORMATION  
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**APC SITE NAME:**  
**MINNEAPOLIS**

**T-MOBILE # A100194A**  
**T-MOBILE SITE NAME**  
**BROOKLYN EV LUTHERAN**

**APC E911 SITE ADDRESS:**  
**5840 69TH AVE N**  
**BROOKLYN PARK, MN 55429**

SHEET TITLE:  
**OVERALL UTILITY PLAN**

SHEET NUMBER:  
**C-8.0**



**DISCLAIMER:**  
 THESE DRAWINGS WERE PRODUCED WITHOUT THE BENEFIT OF A CURRENT LAND SURVEY. ALL PROPERTY LINES, EASEMENTS, SETBACKS, AND DIMENSIONS SHOWN SHALL BE VERIFIED PRIOR TO START OF CONSTRUCTION. POWDER RIVER DEVELOPMENT SERVICES, LLC. DOES NOT GUARANTEE THE ACCURACY OF SAID PROPERTY LINES, EASEMENTS, SETBACKS, AND DIMENSIONS SHOWN.

THE INFORMATION CONTAINED IN THIS SET OF CONSTRUCTION DOCUMENTS IS PROPRIETARY BY NATURE. ANY USE OR DISCLOSURE OTHER THAN THAT WHICH RELATES TO CARRIER SERVICES IS STRICTLY PROHIBITED.

# City of Brooklyn Park Request for Council Action

<b>Agenda Item:</b>	6.3	<b>Meeting Date:</b>	July 22, 2019
<b>Agenda Section:</b>	Land Use Actions	<b>Originating Department:</b>	Community Development
<b>Resolutions:</b>	XX	<b>Prepared By:</b>	Todd A. Larson, Senior Planner
<b>Ordinance:</b>	N/A		
<b>Attachments:</b>	8	<b>Presented By:</b>	Cindy Sherman, Planning Director
<b>Item:</b>	"Pemberly" (Pulte Homes) – Conditional Use Permit, Amended Development Plan, and Preliminary Plat #19-114 for a 105-Unit Residential Townhome Development Northwest of 93 <sup>rd</sup> and Regent Avenues		

## City Manager's Proposed Actions:

MOTION \_\_\_\_\_, SECOND \_\_\_\_\_, TO WAIVE THE READING AND ADOPT RESOLUTION #2019-\_\_\_\_ AMENDING THE "ASTRA VILLAGE" DEVELOPMENT PLAN AND APPROVING PRELIMINARY PLAT OF "PEMBERLY."

MOTION \_\_\_\_\_, SECOND \_\_\_\_\_, TO WAIVE THE READING AND ADOPT RESOLUTION #2019-\_\_\_\_ APPROVING CONDITIONAL USE PERMIT FOR "PEMBERLY," A 105-UNIT TOWNHOME DEVELOPMENT NORTHWEST OF 93<sup>RD</sup> AND REGENT AVENUES NORTH.

## Planning Commission Recommendation:

At the meeting on July 10, 2019, the Planning Commission recommended approval (7-1) of amending the development plan and preliminary plat and recommended approval (5-3) of the conditional use permit with several conditions listed in the attached resolutions. Concerns regarding rental availability were raised during the CUP discussion and two Commissioners voted against the motion because of the inclusion of the condition regulating rentals.

## Overview:

In 2007, the Planning Commission and City Council first reviewed a proposal for a 152-acre master-planned area bounded by Highway 610, Regent Avenue, 93<sup>rd</sup> Avenue, and Hampshire Avenue called Astra Village. The area to the east of Zane Avenue was designated for office uses. The area west of Zane Avenue was designated for office and retail uses. Residential uses were reviewed in an environmental review for a portion of the west, but never approved as part of the development plan in 2008. Over the years, the development plan has been modified several times. In 2015, the western portion of the plan was amended removing the office, residential, and open space, and increasing retail (Hy-Vee), and adding business park sites including Star Exhibits. In 2018, some of the eastern office was replaced with the Urbana Place/Court multi-family developments. The two Prairie Care buildings were constructed according to the originally-designated office portion of the Astra Village plan.

The current proposal is to change 14.459 acres of the remaining 19.109 acres of undeveloped office land just west of Regent Avenue to medium density residential to accommodate a 105-unit townhome development. The rationale is that 93<sup>rd</sup> Avenue east of the Speedway store on Zane Avenue is becoming a residential corridor and the space between 94<sup>th</sup> Avenue and Regent Avenue as office would interrupt that pattern. The remaining 4.65 acres is large enough to accommodate another office building like Prairie Care's 5500 94<sup>th</sup> Avenue building.

The proposed development is intended to provide a smaller and more affordable townhome option than the other three-story models available in the area today. The two-story units have smaller garages as well. The 6.3

proposal requires an amendment to the development plan, plat, and a conditional use permit with flexibilities that are possible in the Town Center zoning district.

**Budgetary/Fiscal Issues:** N/A

**Alternatives to consider:**

1. Approve the proposal as recommended by the Planning Commission.
2. Approve the proposal with modifications.
3. Deny the proposal based on certain findings.

**Attachments:**

- 6.3A RESOLUTION – DEVELOPMENT PLAN AMENDMENT AND PRELIMINARY PLAT
- 6.3B RESOLUTION – CONDITIONAL USE PERMIT/DEVELOPMENT PLAN
- 6.3C LOCATION MAP
- 6.3D PLANNING AND ZONING INFORMATION
- 6.3E LETTERS FROM NEIGHBORS
- 6.3F PLANNING COMMISSION MINUTES
- 6.3G DEVELOPER’S NARRATIVE
- 6.3H PLANS

RESOLUTION #2019-

RESOLUTION AMENDING THE “ASTRA VILLAGE” DEVELOPMENT PLAN AND  
APPROVING PRELIMINARY PLAT OF  
“PEMBERLY”

Planning Commission File #19-114

WHEREAS, Mr. Paul Heuer of Pulte Homes has made application for Preliminary Plat and Amended Development Plan under the provisions of Chapters 151 and 152 of the City Code on property currently legally described as:

*Outlot B, Astra Village 4<sup>th</sup> Addition, Hennepin County, Minnesota*

WHEREAS, the development plan of “Astra Village” was approved by the City Council on August 4, 2008, through Resolution #2008-137; and

WHEREAS, the amendment replaces 14.459 acres of office uses with medium density uses; and

WHEREAS, the development plan of “Astra Village” anticipates a coordinated development area in with uses in conformance with the Comprehensive Plan; and

WHEREAS, a new development is proposed that modifies the uses and building locations from what was approved in 2008; and

WHEREAS, the property will be subdivided in accordance with the development plan with a plat titled “Pemberly”; and

WHEREAS, the matter has been referred to the Planning Commission who have given their advice and recommendation to the City Council; and

WHEREAS, the effect of the proposed use upon the health, safety and welfare of surrounding lands, existing and anticipated traffic conditions and its effect on the neighborhood have been considered.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brooklyn Park that the preliminary plat for “Pemberly” and modifications to the development plan are hereby approved in accordance with the following:

**1.00 DRAWINGS**

- 1.01 Development Plan dated 05-31-2019.
- 1.02 Preliminary Site Plan on file dated 06-25-2019 and Preliminary Site Development Plans dated 05-31-2019 are approved for 105 attached row townhome lots upon compliance with the requirements in this resolution.

**2.00 BONDS, ESCROWS AND DIRECT PAYMENTS**

- 2.01 A Development Contract and bonding shall be required in the amount of **\$2,061,200.00** as a development bond or letter of credit, a **\$108,400.00** cash bond, and a **\$139,300.00** developer’s escrow as required by Chapter 152. The developer’s escrow must be posted with the City Treasurer to cover engineering, legal and administrative costs incurred by the City. If this account becomes deficient, it shall be the developer’s responsibility to deposit additional funds. This must be done before final bonding obligations are complete. Bonding may be recalculated based on a phasing plan.

- 2.02 Payment of any special assessments on the property.
- 2.03 Payment of \$78,465.09 for the future 93<sup>rd</sup> Avenue reconstruction per the Astra Village development plan approvals.

### **3.00 REQUIRED DOCUMENTS**

- 3.01 Approval of Title by the City Attorney.
- 3.02 All utility construction, drainage, grading and development plans must be approved by the City Engineer prior to receiving a building permit.
- 3.03 A comprehensive search shall be performed to identify any existing wells on the property. A licensed well driller shall properly abandon any unused wells in the plat. Such abandonment shall be reviewed and approved by the Minnesota Department of Health.
- 3.04 A final plat showing the correct square footage for each lot area must be submitted prior to recording of the final plat.
- 3.05 West Mississippi Watershed Commission approval and storm water maintenance agreements.
- 3.06 Approval from the Minnesota Department of Transportation for any work conducted in their right-of-way.
- 3.07 Homeowners Association documents must be reviewed by the City Attorney's office. These documents must contain the following items:
  - a. Private street, driveway, and walkway maintenance, including snow removal off-site if it cannot be accommodated on-site.
  - b. Landscaping maintenance of all grounds.
  - c. Heat must be provided to any vacant units during winter months to prevent pipe freezing.

### **4.00 GENERAL CONDITIONS**

- 4.01 It shall be the developer's responsibility to keep active and up to date the developer's contract and financial surety (Letter of Credit, bonds, etc.). These documents must remain active until the developer has been released from any further obligation by City Council motion received in writing from the Engineering Department.
- 4.02 Before final bonding obligations are released, a certificate signed by a registered engineer must be provided. This certificate will state that all final lot and building grades are in conformance to drainage development plan(s) approved by the City Engineer.
- 4.03 No burying of construction debris shall be permitted on the site.
- 4.04 Dust control measures must be in place to prevent for dust and erosion including, but not limited to, daily watering, silt fences, and seeding. The City Engineer may impose measures to reduce dust.
- 4.05 Adequate dumpsters must be on site during construction of streets, utilities, and homes. When full, they must be emptied immediately or replaced with an empty dumpster.
- 4.06 Metal roll-off dumpster containers for construction debris shall be present at each building site within the front yard prior to framing inspections being conducted. Dumpsters shall be monitored for overflow and emptied and completely covered with a secured tarp or cover at the end of each work day.

- 4.07 Adequate portable toilets must be on-site at all times during construction of utilities, roadways, and homes. At no time shall any home under construction be more than 250 feet away from any portable toilet. Toilets must be regularly maintained.
- 4.08 During construction, streets must be passable, at all times, free of debris, materials, soils, snow, and other obstructions.
- 4.09 Street lighting shall be public via the Xcel Energy Group-5 Program.
- 4.10 A sign indicating private roadways shall be placed at each entrance to the development as soon as the roadway is passable.
- 4.11 A left turn/bypass lane must be installed on 93<sup>rd</sup> Avenue at 94<sup>th</sup> Avenue. This may be omitted if 93<sup>rd</sup> Avenue is reconstructed in 2020 or 2021.
- 4.12 No building permits will be issued prior to the adequate public utilities being in place, including street lights, and streets have been installed and determined to be available to use. The City will require that the utilities, lighting, and street system have been designed, bid, constructed and considered operational prior to issuance of any building permits in the development. Also, the City must have all the necessary right-of-way and/or easements needed for the property to be serviced.

If the petitioner needs additional time to satisfy the requirements listed in this Preliminary Plat in order to get it released for recording, then a one-year time extension must be requested. Time extension requests are subject to the conditions found in Subdivision Code (Section 151). The failure on the part of the petitioner to submit a final plat per Section 151 within one year from the date of this approval shall deem the preliminary approval to be null and void.

RESOLUTION #2019-

RESOLUTION APPROVING CONDITIONAL USE PERMIT FOR  
“PEMBERLY,” A 105-UNIT TOWNHOME DEVELOPMENT  
NORTHWEST OF 93<sup>RD</sup> AND REGENT AVENUES NORTH

Planning Commission File #19-114

WHEREAS, the residential subdivision of “Pemberly” has been submitted in the manner required for developing land in the Town Center Zoning District under the Brooklyn Park City Code Section 152.460 through 152.467 and all proceedings have been duly had thereunder; and

WHEREAS, the proposed development is legally described as:

*Lots 1 through 5, Block 1, Pemberly, Hennepin County, Minnesota*  
*Lots 1 through 5, Block 2, Pemberly, Hennepin County, Minnesota*  
*Lots 1 through 5, Block 3, Pemberly, Hennepin County, Minnesota*  
*Lots 1 through 6, Block 4, Pemberly, Hennepin County, Minnesota*  
*Lots 1 through 6, Block 5, Pemberly, Hennepin County, Minnesota*  
*Lots 1 through 6, Block 6, Pemberly, Hennepin County, Minnesota*  
*Lots 1 through 6, Block 7, Pemberly, Hennepin County, Minnesota*  
*Lots 1 through 6, Block 8, Pemberly, Hennepin County, Minnesota*  
*Lots 1 through 6, Block 9, Pemberly, Hennepin County, Minnesota*  
*Lots 1 through 6, Block 10, Pemberly, Hennepin County, Minnesota*  
*Lots 1 through 6, Block 11, Pemberly, Hennepin County, Minnesota*  
*Lots 1 through 6, Block 12, Pemberly, Hennepin County, Minnesota*  
*Lots 1 through 6, Block 13, Pemberly, Hennepin County, Minnesota*  
*Lots 1 through 6, Block 14, Pemberly, Hennepin County, Minnesota*  
*Lots 1 through 6, Block 15, Pemberly, Hennepin County, Minnesota*  
*Lots 1 through 6, Block 16, Pemberly, Hennepin County, Minnesota*  
*Lots 1 through 6, Block 17, Pemberly, Hennepin County, Minnesota*  
*Outlot A, Pemberly, Hennepin County, Minnesota*

WHEREAS, the Town Center zoning district requires a conditional use permit for all uses in conformance with the Comprehensive Plan in that district; and

WHEREAS, said development is consistent with the City Comprehensive Plan and the regulations and requirements of the laws of the State of Minnesota and codes of the City of Brooklyn Park Chapters 152; and

WHEREAS, the Town Center zoning district allows for flexibility to achieve the City’s goals listed in the Comprehensive Plan; and

WHEREAS, quality housing for all ages and incomes is a *BP 2025* goal; and

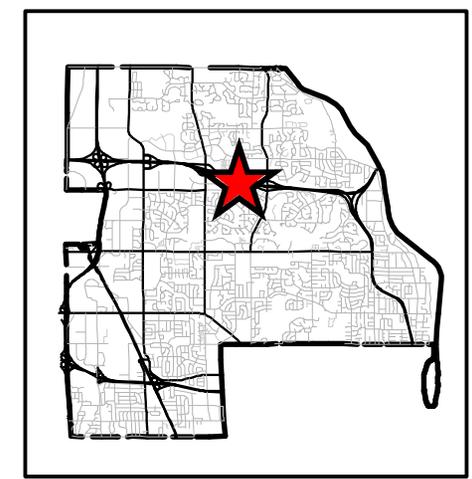
WHEREAS, the Planning Commission held a public hearing and reviewed the proposal at its meeting on July 10, 2019.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brooklyn Park, Conditional Use Permit request #19-114 “Pemberly” shall be approved subject to the following conditions:

1. This development approval is for 105 attached row homes.

2. Home plans for the attached units must conform to the plans dated 04-29-2016 except as modified in this resolution. The front utility meters must be placed within an alcove constructed into the garage.
3. A homeowner's association must be active and responsible for all roadways, landscaping, and common areas, including:
  - A. Professional management;
  - B. Lawn maintenance;
  - C. Snow removal of driveways, entry walks, and sidewalks, including trucking the snow off-site if it cannot be accommodated on-site;
  - D. Refuse service;
  - E. Maintenance and replacement of mailbox structures;
  - F. Common area landscape maintenance, including drainage swales and ponds;
  - G. Private street maintenance and snow removal;
  - H. Maintenance and irrigation of landscape and private improvements within public rights of way;
  - I. Approval, oversight, and enforcement of architectural standards for any improvement to home or landscape;
  - J. Oversight and enforcement of rules and regulations regarding use of the property;
  - K. Collection for and maintenance of insurance and reserves for common elements and shared wall townhome structures;
  - L. Exterior building maintenance;
  - M. Interior building heat in the event of a vacant unit to prevent pipe freezing; and
  - N. All meetings must be open and accessible to residents (not just owners) and adequate notice must be given prior to meetings.
  - O. No more than 10% of the units can be rented at any time. Any unit that is not owner-occupied is considered to be rented. The owner of a rented unit must notify the homeowners association board or management company prior to renting.
4. The attached units must have a full-width stone wainscot base on the sides of Units 1, 6, 11, 33, 34, 45, 46, 51, 52, 63, 64, 70, and 105 (as shown on the preliminary plat). In addition, the sides of units 69, 75, 76, 87, 88, 99, and 100 will have the same full-width stone wainscot base as these sides of these units have greater exposure.
5. The color palates for siding shall provide a variety of options for the buildings, but buildings themselves shall have no more than two main colors, other than trim colors, for simplicity.
6. At 402 square feet, the garages do not meet the required 480 square feet area requirement. All homebuyers of initial construction shall be provided the option to have selected shelving of at least 50 square feet installed in the garage and the shelving will be provided in the base price; other storage options may be selected at additional cost. This requirement is to meet the storage intent of City Code in lieu of the reduced garage area. This option must be disclosed to the homebuyers during the design and purchase process.
7. The units do not contain the required 120-square foot storage room in lieu of a basement.
8. Homes constructed along Highway 610 (Blocks 3, 4, 5, and 6) must include construction materials to attenuate sound from the highway per MNDOT noise regulations.
9. A sign indicating a private roadway must be installed as soon as the street is passable.
10. The monument sign must be installed to meet City regulations.

**Plat/Conditional Use Permit #19-114  
Pemberly (Pulte Homes)**



Land Use Plan	Mixed Use
Current Zoning	Town Center (TC)
Surrounding Zoning	West – Town Center (TC) East – Planned Community Development District (PCDD) <i>Avebury (Amesbury) Place townhomes</i> South – Planned Community Development District (PCDD) <i>The Gardens of Edinburgh</i> North – Highway 610
Neighborhood	Trinity Gardens
Site Area	14.459 acres
Number of Units	105
Average Density	7.26 units/acre (medium density)
Conforms to:	
	Land Use Plan – Yes (2040)
	Zoning Code – Yes
	Variances Needed – None
Notification	100 Mailed Notices (500 feet) Proposed Development Sign Sun-Post Legal Notices Neighborhood Update Email – Trinity Gardens

### Land Use

The property is guided for Mixed Use on the 2030 Comprehensive Plan. Mixed Use does allow for stand-alone residential uses, but they are limited to 30 percent of the site. The proposed site plan will put the Mixed Use portion of Astra Village over the 30 percent limit (to 52 percent); however, under the proposed 2040 Plan, Mixed Use allows for more residential uses and the site is in compliance with the 2040 Plan.

### Building Designs

The proposal is for fifteen 6-unit buildings and three 5-unit buildings. The units are all lined in a row with the front door and garage facing the front toward the street. The base design is a two-story 1,885 square foot design with options to add a third-floor loft or back sitting room extensions for additional area.

The buildings will be constructed primarily with vinyl lap siding with shake accents and a stone wrap around the garage door. The applicant has selected a palette of colors for the development with each building having two colors to provide a variety around the development while keeping the individual buildings simple.

The plans show some of the buildings having a stone wainscot along one side. As proposed, the amount of stone is only approximately 27 percent of the front façade, on average, which is below the standard 30 percent typically shown on townhomes. It is recommended that sides of seven additional buildings that have exposed ends add a stone wainscot. This should bring the amount of stone over the 30 percent standard and provide visual interest on the exposed sides of the buildings (Units 1, 6, 11, 33, 34, 45, 46, 51, 52, 63, 64, 70, and 105 as shown on the preliminary plat and adding the sides of units 69, 75, 76, 87, 88, 99, and 100).

Also of note, staff observed utility meters along the garage returns outside of the front door at a similar project in Plymouth and staff felt this did not present a welcoming appearance. Staff has been working with the applicant on modifications to this design and the applicant is proposing to create a recessed area to house the meters.

Interiors include three bedrooms and the third-floor loft addition can be a fourth bedroom. These units do not have a basement. City Code requires townhome units without basements to provide a 120-square-foot storage room. This storage space can be incorporated into a larger garage. The proposed floor plans do not include a separate storage room.

### **Access and Roadways**

A new 28-foot wide private loop roadway, 94<sup>th</sup> Lane, will have one access from 94<sup>th</sup> Avenue. All units will have driveway access from the private road. A sign must be installed stating that the roadway is private to inform potential buyers and alert guests.

The entrance to the development is split and contains a quick turn. At the request of the Fire Department, a turn simulation was provided showing that a Brooklyn Park fire truck should be able to make that turn easily.

The trail connection to Regent Avenue will be constructed so that it can be an emergency roadway in the event the one access point is blocked. The trail is shown to connect to the location where a curb cut is today. The curb cut will need to be modified to accommodate the trail with the Regent Avenue sidewalk restored. Some type of removable obstruction such as bollards or similar design is required at both ends of this trail so that cars do not drive down it during normal conditions, yet allowing pedestrians and bicyclists to use it, and allowing easy access in the event of an emergency.

With all of the driveways connecting to 94<sup>th</sup> Lane, limited snow storage area is available. In the event snow becomes an obstruction to traffic or site lines, the association will have to truck the snow off-site. This requirement must be included in the association documents.

### **93<sup>rd</sup> Avenue**

93<sup>rd</sup> Avenue is a City roadway with a rural design. There has been a lot of discussion regarding the future of the roadway in recent months. From a traffic management perspective, the roadway operates well and can accommodate the additional traffic expected from the proposed development with the addition of right and left turn lanes. The roadway does not accommodate pedestrians and bicyclists well, however, with only paved shoulders along a part of the roadway. The Council has started discussing the reconstruction of the road to an urban design with sidewalks or multi-use trails, landscaping, and lighting, but no timeline has been determined. As the Astra Village properties have developed, the City has been collecting money, as part of the original approvals, to help fund a reconstruction project. With Pemberly, \$78,465.09 will be collected.

This level of development will result in additional traffic, although light, but when coupled with the other developments previously approved, will need the installation of a right and a left turn/bypass lane on 93<sup>rd</sup> Avenue. These items may be omitted if the future reconstruction of 93<sup>rd</sup> Avenue between Zane and Regent Avenues occurs within the next year.

### **Pedestrian Connections**

94<sup>th</sup> Avenue has a multi-use trail adjacent to the site. Private trails are shown linking the 94<sup>th</sup> Avenue trail into the center green space. No sidewalks are shown paralleling 94<sup>th</sup> Lane.

### **Parking**

Each building contains a two-car garage. City Code requires a 480-square foot garage for all townhomes. The applicant is proposing a 402 square foot garage. In other recent townhome proposals, garage areas have been reduced to 453 with the addition of shelving to provide homeowners the intended storage. The proposed garages are smaller than those garages with a graphic showing how vehicles and trash/recycling containers can be accommodated. Shelving for storage is proposed above the doorways.

Each unit will have a driveway of at least 25 feet, enough to accommodate two cars. Six parking bump-outs are scattered around the site to provide 24 additional guest parking spaces. Parking is limited to one side of a 28-foot private roadway, but the number of driveways in Pemberly significantly limits on-street spaces.

### **Landscaping and Screening**

The proposed landscaping plan shows the required number of trees and shrubs using exchange credits. Instead of planting some trees, City Code allows for exchanging one tree for ten shrubs. In order to keep the center green area open and usable, the applicant has exchanged 44 trees that otherwise would have been planted here with 440 shrubs around the perimeter of the site.

The landscaping plans show a monument sign in the entry median. This sign is only four feet from the edge of the right-of-way and will cause visibility issues. The applicant has stated that they will install the sign closer to 93<sup>rd</sup> Avenue instead. The sign will be installed to meet City regulations.

Along Highway 610, a 10-foot masonry wall is proposed. A sound study was provided that shows the wall will be effective for the lower levels of the adjacent units in attenuating highway noise. The upper units, however, will not be screened from the noise. The study indicated that proper insulation and noise attenuating windows will bring the upper levels into compliance. No details of the wall were provided, but it is recommended that the wall match the one constructed with Avebury Place on the other side of Regent Avenue for consistency along the Highway 610 corridor.

### **Storm Water Management**

The site currently has a storm water basin to take water from 94<sup>th</sup> Avenue as well as the Urbana developments to the west. This basin will be expanded and two smaller basins will be added to the site. The basins are expected to be dry under normal conditions and will be landscaped appropriately.

### **Utilities**

Public water and sanitary sewer mains are proposed throughout the development. The street lights will be public using the Xcel Energy Group 5 program.

### **Park Dedication**

The Seed Family has credits that were given through donation of the Edinburgh USA golf course in the 1980s and subject to agreement with the City are available to satisfy park dedication requirements in new development on Seed family properties. The credits will be used with this development.

From: cbjehj  
Sent: Wednesday, July 3, 2019 4:49 PM  
To: Todd Larson  
Subject: Townhouses

I believe we have plenty of two and three story townhouses in the area. Single level with basements would be okay, but I oppose any more two or three story townhouses.

Eleanor Johnson  
4744 Oxborough Ct

\* \* \*

From: Collette Guyott-Hempel  
Sent: Wednesday, July 10, 2019 6:29 PM  
To: Cindy Sherman  
Subject: Townhomes

Townhomes 93rd and 94th Ave. Like design of the homes. Like the playground self-contained. Concerns: Density should be under 9 units per acre. Parking not enough for a baby/wedding shower or house warming within the development. No parking design of both 93rd and 94th Aves. These roads are used by semis, ambulances and firetrucks for life threatening emergencies and parking would make it dangerous. 610 Alternate Traffic travels on both roads as well as HyVee customers. HyVee trucks have been seen by numerous people making u-turns on 93rd. Property owners along 93rd do not want parking on 93rd. There is no sidewalk easement for our properties and a sidewalk or pathway was to be on 93rd on the north-side only. I don't think Regent Parkway wants parking except by property owners having a permanent permit doing yard maintenance. Developer could take out a few units or move the playground in the green space and take out greenspace for parking. The city had promised to take care of any sidewalk with 610 yet they did not. We had them remove it after 18 years of the city not honoring the snow removal that the city council said they would do. Bike pathway should be on 93rd as part of road improvements. Having bikes and pedestrians cross Regent not at the crosswalk is asking for an accident. Especially because the Regent traffic is going 45 mph and coming over a hill, effectively a blind spot. They are also prone to speeding and not stopping at the stop sign on 93rd. I am asking that part of the approval include increased on-site parking and the reduction of speed on 93rd as well as this 1/2 mile stretch of State aid roadway be finished in 2020 to accommodate the fact that this road not only serves 1000 homes built 20-30 years ago but will also serve 500 new homes and apartments by the end of 2020. This road is too fast at 50 mph and no sidewalks to support the town center concept of being walker and bike friendly. 5:22 PM and 6PM today racing vehicles on 93rd. Yes, it is my hope that additional homes will decrease speeding and increase stop sign obedience. But until this road is finished, I wouldn't count on it. Brooklyn Park has collected money from developers and received state funding for this road for 20 years plus. I think the 30 residential homes deserve to have this road completed. We have waited long enough and the city has gotten the funds. Thank you.

**Planning Commission Meeting Minutes  
June 12, 2019 – Regular Meeting**

**1. CALL TO ORDER**

The meeting was called to order at 7:00 PM.

**2. ROLL CALL/PLEDGE OF ALLEGIANCE**

Those present were: Commissioners Hanson, Herbers, Husain, Kiekow, Kisch, Mersereau, Morton-Spears, Vosberg; Senior City Planner Larson; Planning Director Sherman.

Those not present were: Commissioner Mohamed; Council Liaison West-Hafner.

**6. PUBLIC HEARING****C. Pemberly (Pulte Homes) – Conditional Use Permit #19-114 for a 105-unit residential townhome development northwest of 93<sup>rd</sup> and Regent Avenues.**

Senior Planner Larson introduced the application by pointing out the site at the northwest corner of Regent Ave and 93<sup>rd</sup> Ave with 94<sup>th</sup> Ave being the southwest border of the site. He provided history of the site. The Astra Village Development Plan was approved originally about 12 years ago for 150 acres between Regent Ave and Hampshire Ave from 93<sup>rd</sup> Ave on the south to 610 on the north. It was a master planned community that had retail, offices, a hotel, and tech uses with a portion of the western side reviewed for higher density housing. However, the higher density housing was not included the development plan at the time because of a moratorium in effect at the time that prevented any high-density housing. A few amendments have been made over the years including the accommodation of more retail uses such as HyVee and business park uses such as Star Exhibits on the western portion. The eastern portion was amended to accommodate the multi-family housing development Urbana. He noted the senior apartments of Urbana are almost done with the parking lot paved just today, and construction of the marking rate apartments will start in the next few weeks. The remainder of the site was envisioned for 4 more medical office buildings. He explained the proposal tonight is to change three of the remaining offices sites to medium-density residential attached townhomes. There will still be one site available for a medical office building the same size as Prairie Care.

Senior Planner Larson stated the proposal contains 105 row unit townhomes mostly in 6-unit buildings but there are three 5-unit buildings to fit the corner. He explained all the units would be centered around a common loop private roadway. He mentioned City Staff did have some concern over one way in and out for that many units without a second exit. The applicant is proposing a trail out to Regent Ave that could be used as a roadway in the event of an emergency, but the trail will need some sort of gate or chain installed at both ends to prevent people from regularly driving on the trail. He said the landscaping plan does meet requirements for trees and shrubs with some exchange credits for more shrubs around the units. The units will be two-stories with a third-floor options with some decorative windows. He pointed out that the five-unit building would lose a doubled-up door in the middle. The side elevations show two different versions, one with some brick, but most sides would be bare. The rear of the building would be visible from 93<sup>rd</sup> Ave and Regent Ave. He described the buildings are offset so that the garages are not flush with each other. He noted there are seven different color patterns with two colors per building that are complimentary, but no two buildings will have the same color next to each other. He explained this color choice is to keep things simple yet provide some variety. He pointed to the development plan which reflects the use of stone is below the 30% average that is expected in such a development, so Staff recommends additional exposed sides include stone. He noted the garage sizes of the units are 402 square feet, but City Code requires at least 480 square feet. Furthermore, any townhouse that doesn't have a basement needs a 120-square-foot storage room which can be incorporated into the garage for a 600-square-foot garage to account for storage needs. He added that the Planning Commission and City Council have approved projects in the past few years that have dropped the garage requirement down to as low

as 453 square feet in exchange for the developer installing shelving initially. The proposal does show shelving that is high enough to not block the door while fitting a car, truck and garbage bins within the space. Staff recommends approval.

Paul Heuer of Pulte Homes, 7500 Flying Cloud Drive, Suite 670 in Eden Prairie, MN 55334 introduced Adam Seed, who represents the trust that owns the property, and Bob Molstad with Sathre-Bergquist, the engineering and surveying firm for detailed engineering questions. He presented information on the background of Pulte as a company as well as further explained the thought process behind the layout and home design. They believe their product is needed, versatile, and fits to the area.

Commissioner Chair Hanson opened the public hearing.

Collette Guyott Hempel, 9277 Trinity Gardens, is happy with the plan for a two-story townhome development. She stated concerns with traffic levels and pedestrian safety within the area.

Pablo Rodriguez, 5065 93<sup>rd</sup> Lane, recently purchased a new end-unit that faces Regent Ave and 93<sup>rd</sup> Ave. He agrees with the traffic and safety concerns raised by Ms. Hempel. He would like to see bicycle and walking paths to make the road more of a boulevard. He suggested a roundabout and more street lights to slow people down. He asked for the developer to provide trees to add to privacy and beauty. He suggested the developer mimic the design features of the development on the other side.

Adam Seed, 7588 Urbandale Ln in Maple Grove, represents the landowner. He expressed his family is happy how the land use of the development plan has evolved with the community and market needs. They are happy with this proposal and feels this product will appeal to the empty nesters which is growing population in the City. He said they believe the remaining 5 acres, after this project, will most likely go to another medical office like Prairie Care.

Seeing no one approach the podium, Commissioner Chair Hanson closed the public hearing.

Commissioner Chair Hanson stated her support for the proposal. She appreciated that the traffic is being routed out on to 94<sup>th</sup> Ave. She echoed the sentiments of the residents that it is time for 93<sup>rd</sup> Ave to be completed encouraging those residents to continue speaking to their City Council members and participating in the open forum on Monday nights. She knows an update on the 93<sup>rd</sup> Ave project is coming, but from her involvement with the City she understands that the squeaky wheel gets the grease. She stated to consider it was also a county road.

Planning Director Sherman clarified that the county road ends at Zane, so to the west it is a county Road, but from Zane to the east it is a City street.

Commissioner Chair Hanson asked City Staff to update on the status of 93<sup>rd</sup> Ave improvements.

Senior Planner Larson stated the latest update is that City Council approved a traffic signal at 93<sup>rd</sup> Ave and Noble Ave which was an identified problem area; especially for those turning left to head towards 610. However, this improvement is likely to increase traffic rather than deter. He explained City Council will be deciding over the next few weeks and months which projects will be shuffled around to allocate money towards rebuilding the road. He stated that roughly \$223,000 has been collected over the years, and approximately \$75,000 will be collected with this project. He indicated it will probably be substantially more to complete the road updates. He explained the design of the road will include sidewalks and/or multiuse trails, street lights and landscaping.

Planning Director Sherman added that the City Council will be discussing where this project fits in as part of the budgeting process. She stated a decision has not been made, but City Staff has been directed to provide project information for the budget decision making.

Commissioner Chair Hanson asked for clarification on typical garage and storage sizes.

Senior Planner Larson reiterated the 480-square-foot minimum for garages in single-family homes and townhomes. He explained townhomes have a requirement for an additional 120-square-feet of storage space if there is no basement. He explained other recent projects such as Oak Village and Avebury had a lower level room with a utility closet that can be utilized as a storage room. In both DR Horton and CalAtlantic proposals included garages at about 453-square-feet which was mitigated by installing shelving in the garages.

Planning Director Sherman added that City Staff asked for the graphic provided by Pulte that shows how trash cans and vehicles will fit in the space since there was concern with the size.

Paul Heuer explained Pulte has been selling this newer townhome product for several years, and they are typically 21-feet deep with a garage size of 372 square feet. Pulte understood that Brooklyn Park prioritize garage space, so they extended the depth by another foot and the garage to 402 square feet. He assured the Commission that storage has not been an issue, objection or concern brought to the attention of their sales department. He said typical signs of storage issues, such as cars parked in the driveways, are not any more prevalent when driving through the established neighborhoods on the weekends or evenings; at least not compared to a single-family neighborhood. He added that the type of buyers who buy this home typically have mid-sized cars and not pick-up trucks, so they don't need a lot of garage space. He argued that since the association takes care of the maintenance, these homes do not need to store snowblowers, lawn mowers, weed wackers, or other garden type tools. Furthermore, there are reasonable restrictions in the HOA documents that prevent from people parking their cars outside for the long-term. He stated the current trend for townhomes is to sacrifice garage space for more living space.

Commissioner Chair Hanson asked for guest parking to be identified.

Paul Heuer pointed to five areas placed throughout the development that would be available for guest parking. He noted the minimum private street width in Brooklyn Park is 28 feet which is wide enough to allow for parking on one side of the street. He said the on-street parking in Pemberly will be far and above what is available in their typical communities that have 24-foot wide private streets which cannot accommodate parking.

Commissioner Kisch asked if the 12-foot width of the proposed emergency access path will be wide enough from an emergency standpoint.

Senior Planner Larson explained the intent of the path is not to account for an emergency vehicle, but more for providing an alternative if the exit on to 94<sup>th</sup> Ave is blocked. He assured the Commission the fire truck would need to access the development through the entrance on 94<sup>th</sup> Ave.

Commissioner Kisch urged the City to consider further buildout of the area to connect with the park and trail system to further reinforce the value of the Capital Improvement Plan to prioritize 93<sup>rd</sup> Ave especially since this development would complete the north frontage. He stated there is no longer a question of "if" it will be developed. He wanted confirmation that the applicant is aware of a requirement, in relation to the reduced garage sizes, is that the homebuyers of initial construction shall be provided the option of selected shelving to be installed in the garage. He mentioned that previous applications with reduced garage sizes there was a defined square footage included in the base. He urged that the base be clarified as the proposal moves to City Council. He asked if there were any elevations that reflect the option of a half-story loft. He asked City Staff if the half-story impacts the language in the Conditional Use Permit for two-story townhomes since it is technically a third level.

Planning Director Sherman said the loft doesn't add a third story.

Paul Heuer showed a graphic of an example of a rooftop terrace off the rear elevation of the home.

Commissioner Kisch agreed that the visual shows that there is technically a third floor, but the loft doesn't impact the overall height of the structure.

Paul Heuer confirmed this is correct, the roofline is the same either way, the variation is found in the cutout of the rooftop terrace.

Commissioner Kisch wanted to make sure the language of the Conditional Use Permit does not limit the option of a third occupiable floor.

Planning Director Sherman agreed the language should be clarified to allow for an optional loft as long as the roofline is not raised.

Commissioner Kiekow has a concern with another townhome development within the area. He speculated the potential for problems 50 years down the road due to the concentration of the area, similar to current problems found with the Brooklyn Blvd and Zane Ave apartments. He doesn't believe it is wise to concentrate these townhome developments in one spot.

Planning Director Sherman said that part of the discussion with the Seed family and Pulte Homes included the want for a different product type since there were already a number of three-story townhome developments. She indicated that with the mixture in product type there is a variety in the area even though there are several attached townhomes. She assured the Commission that there is no concern with the density of the area, and that the mix of unit type, presence of associations, and the ownership opportunities will not create a negative impact in the long term.

Commissioner Kiekow asked if there is a restriction placed on renting out these units once purchased.

Planning Director Sherman asked Paul Heuer if their HOA has any restrictions, noting that many HOAs do.

Paul Heuer stated there are no restrictions on rentals within their townhome or single-family home developments.

Commissioner Vosberg recommended language in the HOA documents that prevent rentals as she believes that is how the City will end up with the concerns brought up by Commissioner Kiekow. She agreed that if the properties are owned, she doesn't see the same types of problems that occur when there is a heavily concentrated area of rentals. She added the speed limits on the road is inconsistent and at the very least the signage should be corrected. She recommended that 93<sup>rd</sup> Ave improvements be made a priority due to the substantial increase in traffic which is made difficult by limited access and inconsistent speeds. She noted a goal of the City is to be pedestrian friendly, and she doesn't believe that the City is living up to that goal. She stated that putting in additional housing without providing consistent paths or trails on both sides creates a danger zone. She encouraged landscaping the streets a little differently. She felt like the trees that were planted in front of the three-story townhomes not only slows down the traffic but creates a sense of place instead of a freeway as well as a sound barrier.

Paul Heuer responded that Pulte Homes will consider rental restrictions if that is requested by the majority.

Planning Director Sherman explained the languages used in the Village Creek Redevelopment Area and the original construction portion of Wickford Village limit rentals to 10 percent of the total units. She stated that the City can't completely restrict rentals because the market may not allow for someone to easily sell their townhome when they are ready to move up to a single-family home. She agreed that limiting rentals has helped. She pointed out the other trend that is no longer prevalent was people purchasing townhomes and single-family homes to convert them into rentals back when the prices were very low. Now that the market has bounced back, this is less likely. She stated people do not buy a \$250,000 townhome as a rental. She explained if the market falls that is when the trend could change back, but that is when the safe gap of limiting the units to 10 percent is helpful. She offered to provide language to Paul for him to review with his lawyers, and the language will be inserted into the resolution when the proposal goes to City Council.

Commissioner Husain stated he doesn't want the City to dictate how the association is to handle rental units. He wants this to remain between the association and the homeowners.

MOTION HUSAIN, SECOND KISCH TO RECOMMEND APPROVAL OF AMENDING THE “ASTRA VILLAGE” DEVELOPMENT PLAN AND APPROVING PRELIMINARY PLAT OF “PEMBERLY,” SUBJECT TO CONDITIONS IN THE DRAFT RESOLUTION.

Commissioner Vosberg made it clear she will not vote for this if there is no rental restriction included.

Senior Planner Larson confirmed the rental restriction would be included in the second motion that deals with the Conditional Use Permit language.

*MOTION CARRIED 7-1. COMMISSIONER KIEKOW VOTED NAY.*

MOTION KISCH, SECOND HANSON TO RECOMMEND APPROVAL OF CONDITIONAL USE PERMIT FOR “PEMBERLY,” A 105-UNIT TOWNHOME DEVELOPMENT NORTHWEST OF 93<sup>RD</sup> AND REGENT AVENUES NORTH WITH THE ADDED CONDITION TO ADD LANGUAGE IN THE HOA COVENANT TO RESTRICT RENTAL TO 10%, CLARIFY LANGUAGE REGARDING GARAGE STORAGE, AND OTHER RECOMMENDATIONS AS DISCUSSED.

Commissioner Herbers agreed with Commissioner Husain that restricting rental to 10% of the 105 units is overstepping and will be hard to police. He speculated this could depress the value of the homes because your limiting people from renting out their house when they are ready to purchase a bigger home. He confirmed he is in favor of the proposal itself.

Commissioner Husain confirmed he is voting against the rental restriction amendment, not the proposal itself. He doesn't believe the City should be taking this decision away from the future homeowners at this stage.

Commissioner Kisch stated he stands by the motion, but he recommended City Council to have a discussion about the language regarding the potential rental restriction.

Commissioner Vosberg reiterated her belief that a rental restriction needs to be included in the HOA documents due the history of problems in the City. She argued that rentals haven't increased the value of homes in Brooklyn Park, if anything it has decreased the value of homes.

Commissioner Chair Hanson agreed with Commission Vosberg.

*MOTION CARRIED 5-3. COMMISSIONERS HERBERS, HUSAIN, AND KIEKOW VOTED NAY.*



## **“PEMBERLY”**

**APPLICATION FOR:  
PRELIMINARY PLAT, DEVELOPMENT PLAN AMENDMENT, CUP**

**BROOKLYN PARK, MINNESOTA  
June 10, 2019**

### **Introduction**

Pulte Homes of Minnesota, LLC (“Pulte”) is pleased to be submitting this application.

Our company mission statement is **“Building Consumer Inspired Homes and Communities to Make Lives Better”**. We currently operate under three distinct brands of homebuilding throughout the country: Pulte Homes, Centex Homes, and Del Webb. The office for Pulte’s Minnesota Division is in Eden Prairie. We will sell and build approximately 500 homes in the Twin Cities in 2019 under the Pulte Homes and Del Webb brands.

Pulte will act as both developer of the property and builder of the homes. The primary contact for Pulte is:

Paul Heuer, Director of Land Planning & Entitlement  
7500 Flying Cloud Drive, Suite 670  
Eden Prairie, MN 55344  
952-229-0722  
[Paul.Heuer@PulteGroup.com](mailto:Paul.Heuer@PulteGroup.com)

The owner of the property is:

James Michael Seed Trust  
42 Ladd Street, #305  
East Greenwich, RI 02818  
Contact: Adam Seed  
401-787-1087  
[adam@astraventures.us](mailto:adam@astraventures.us) mol

The surveyor and civil engineer are:

Sathre-Bergquist  
Attn: Bob Molstad  
150 South Broadway  
Wayzata, MN 55391  
952-476-6000  
[molstad@sathre.com](mailto:molstad@sathre.com)



We are proposing a two-story townhome that differs from past townhome uses in the area (mostly three-story) and that provide another housing choice for Brooklyn Park home buyers. One of the primary ways that a three-story townhome differs from a two-story townhome is that the two-story townhome appeals to empty nest buyers as well as traditional first-time homebuyers.

## **Neighborhood Design**

We have carefully studied the market, design guidelines, the property, and the surrounding uses and have worked diligently to create a neighborhood layout that is ideally suited to this property. Below is a description of the various strategies utilized in designing the neighborhood.

### **Access**

We recognize that a goal of most public agencies is to limit access to more heavily traveled roads such as Regent Avenue North and 93<sup>rd</sup> Avenue North. Our primary access has deliberately been designed from 94<sup>th</sup> Avenue North to comply with this standard policy. We are also providing an emergency vehicular access from a dual use trail connecting to Regent Avenue North. In addition, the primary entrance has been designed to have a wide parkway. In the slim event that there is a blockage on one direction of the entrance, the other direction will continue to be open. In summary, we have provided the most desirable primary access location and two alternate/redundant access points.

Internally, we have designed the neighborhood to have one continuous private loop road. This results in strong internal connectivity.

### **Entrance Experience**

We have learned that people have a difficult time articulating why a neighborhood “feels good.” We’ve also learned to incorporate some of the subtle characteristics that evoke such positive emotions and feedback. One such characteristic is the creation of a strong entrance experience. This property has the traits that allow us to deliver this experience.

We utilized two strategies to create such an entrance experience. First, we created a wide, parkway entrance drive which will be heavily landscaped. This provides beauty and desirability. The second strategy is to create an attractive view corridor at the end of our entrance experience, which involves not placing buildings between the entrance and the open space. When visitors drive into the entrance road and drive past the heavy landscaping, they encounter a “tee” intersection with open space in front of them. When someone arrives in this neighborhood, they will see a beautifully landscaped entrance median and then a deep view of the tot lot and open space.

### **Private Tot Lot & Open Play Area**

A key part of creating new neighborhoods is understanding our customers and anticipating their desires. This property is in an attractive location, surrounded by a variety of recreational, retail, and convenience-oriented amenities. Still, many people desire private, social gathering places to form relationships with their immediate neighbors. They also desire having amenities closer and more convenient to their homes (the Noble Sports Park tot lot is about ½ mile from the homes in this neighborhood). This is an important priority for many of our customers, and the size of the neighborhood is large enough to economically sustain such amenities.

We have planned a tot lot (playground) as well as some open play area. These amenities will be owned and maintained by the homeowner's association. It should be noted that we have carefully located the tot lot to be viewed as part of the entrance experience. The tot lot has been located near the "tee" intersection of the main entrance. It also spurs and encourages social interaction as each neighbor who arrives home will see who is out enjoying the playground and is therefore more willing to join them.

## **Building Orientation**

One important design attribute that can make a townhome neighborhood feel more "livable" and attractive is to vary the orientation of the buildings. This prevents the feeling of "barracks" that can sometime occur if attention is not given to how the geometric layout of the neighborhood impacts how it "feels." We are utilizing this strategy throughout the neighborhood and the results are positive.

## **Trails & Pedestrian Connectivity**

We have provided a network of trails within the neighborhood that integrate with the surrounding pedestrian system. The internal trails connect to the sidewalk along 94<sup>th</sup> Avenue North in two locations and to Regent Avenue North as well. We have planned these trails to be privately owned and maintained by the homeowner's association.

## **Sound Attenuation**

This neighborhood will be immediately adjacent to Highway 610 which generates traffic noise. We hired David Braslau Associates, Inc., the leading Traffic Noise Assessment consultant in the Twin Cities. Mr. Braslau also completed the study for the townhome neighborhood immediately to the east. Mr. Braslau determined that we need to construct a 10-foot tall barrier on top of the planned berm to meet Minnesota noise standards. We will comply with this recommendation.

To meet the night time noise standard, an exception to the Minnesota rules was required. Our standard construction materials successfully met this exception. It should be noted that Mr. Braslau indicates that almost all noise studies in Minnesota require this exception to meet night time standards. This has become the standard approach.

## **Our Homes**

Pulte Homes is known for the extraordinary steps that we take to ensure that we are designing and building homes that meet the needs and desires of home buyers. We continually reach out to the public and Pulte homeowners to get feedback to improve our home designs. We call this Life Tested®. Through this intensive process, we have conceived of and incorporated many innovative home design features such as the Pulte Planning Center, Everyday Entry, Super Laundry, Oversized Pantry, and the Owner's Retreat. This exhaustive process has played a major part in Pulte's success in "Building Consumer Inspired Homes and Communities to Make Lives Better."

This location is ideally suited for townhomes. We will be building two story townhomes (rowhomes) which will provide association-maintained lawn maintenance, snow removal, and building exterior maintenance. This type of home appeals to singles and first-time home buying families. We also find that approximately 30% of the buyers of this home design are empty nesters for a variety of reasons. First, they are attracted to the lawn maintenance and snow

removal provided by the homeowner's association. Second, empty nesters are attracted to the smaller square footage as they desire a smaller home to live in and to maintain. Third, the open and flexible floor plans and options such as a sunroom have been very appealing to this demographic group. Combined, these traits have led this home to be very popular among empty nesters.

We have been tracking a gradual change in how empty nesters are approaching the home buying experience. Historically, many moved directly from their single-family homes into a single level home or an assisted living facility. In recent times, a significant percentage of our population is maintaining a high level of health as they age. This has resulted in many empty nesters delaying their move into single level homes and assisted living facilities. It has resulted in one additional move for many empty nesters. Our two-level townhome is filling the demand for active and healthy empty nesters as they make their initial move from their single-family homes.

When fully occupied, this neighborhood will have a nice mix of demographic groups living together.

## **Floor Plans**

Homes will start at approximately 1,850 square feet of finished living space. Above the second floor, a half story can be finished as a unique rooftop terrace option. A popular first floor option is the sunroom. Depending on what options are chosen, anticipated townhome prices will range from the high \$200k's to the high \$400k's.

The number of homes within each building will vary from five to six. Every home will have a two-car garage with space in the driveway for two additional cars. We have also added guest parking lots throughout the neighborhood in convenient locations.

## **Architecture**

We have placed considerable effort on the architecture of the homes. Front facades are individualized and stylized with varying windows, gables, shutters, materials, dormers, and roof lines (see exhibits). The first floor of the front elevations is packed with stone. The use of stone, shakes, and banding boards serve as strong accents. Side elevations present a variety of roof lines and siding materials. In addition, we have added a significant amount of stone on the thirteen more highly visible side elevations. Rear elevations also present a similar combination of interesting and varied features and siding materials.

We have also chosen to upgrade all garage doors to a decorative garage door (see exhibit).

## **Color Palette**

We have predesigned the building color palette for the neighborhood. We created seven distinct and timeless color packages for the buildings. Each building will have two colors. No color palette will be used more than three times within the neighborhood. By designing the neighborhood in this way, we can be assured that the finished neighborhood will be attractive and diverse. See the enclosed color samples and neighborhood color palette design.

## Energy Efficiency

The homes that Pulte will be constructing will have extremely high energy efficiency. Each home is tested using the Home Energy Rating System (HERS) index, which is the industry standard for measuring energy efficiency. Heating, cooling, and water heating constitute the largest cost of homeownership outside of the mortgage. The U.S. Department of Energy has determined that a typical resale home scores 130 on the HERS Index while a home built to the 2004 International Energy Conservation Code is awarded a rating of 100 (lower is more energy efficient). Pulte Homes measures the HERS score of every new home constructed. The average HERS score for our homes is runs in the range of 47 to 53. We are building extremely energy efficient homes that dramatically exceed the International Energy Conservation Code threshold.

## Phasing & Schedule

The following preliminary schedule for development is envisioned based on current projections and information.

2019 fall	Site development – grading, utilities, streets (one phase)
2019 late fall early winter	Build model home
Jan 2020	Begin home sales
Spring 2022	Complete home build out

*This submittal includes:*

- *Land Use application*
- *Application fee/escrow of \$16,200*
- *This narrative*
- *Ryan Companies letter regarding market demand*
- *Survey, engineering, and landscape architecture*
- *Traffic Noise Study*
- *Example home colored renderings*
- *Building footprints and elevations*
- *Stone calculations*
- *Map showing locations of buildings with stone on side elevations*
- *Garage door exhibit*
- *Color palette exhibit*
- *Color samples*
- *Site cross sections*



February 13, 2019

Cindy Sherman  
Planning Director  
City of Brooklyn Park  
5200 85<sup>th</sup> Ave N  
Brooklyn Park, MN 55443



**Re: Residential Development at Astra Village – Brooklyn Park, MN**

Dear Cindy,

This letter is in response to a request of Ryan Companies US, Inc. made by the Seed family to provide an opinion of market feasibility for development on their family's land at the Northwest quadrant of Regent Avenue N and 93rd Avenue N. We were recently informed that the Seeds have received strong interest from a residential developer to purchase approximately 15 acres of their land for multi-family development. We were also informed that there may be a desire on behalf of the City of Brooklyn Park to reserve this land for other land uses rather than multi-family development. As such, the Seed family has requested our opinion on land use in this area for consideration as the residential development proposal is evaluated.

Relating to office development; There has been little to no demand for office development in 2018 in the Northwest Metro submarket, evidenced by approximately 14,000 square feet of negative absorption in the Northwest Metro submarket. This is meaningfully below the overall metro office market that experienced 796,000 square feet of positive absorption during 2018. Additionally, average asking rental rates have decreased, year over year, to approximately \$11.07 per square foot in the Northwest market which is significantly below the threshold to support new construction. Again, this is meaningfully below the overall metro average asking rental rates of \$14.92 per square foot. These statistics were pulled from the Q4 2018 CBRE Market Overview. The overwhelming trend in today's office market shows a desire from users to locate in dense urban locations that offer extensive and diverse amenities within walking distance, ample green

Ryan Companies  
50 South Tenth Street, Suite 300  
Minneapolis, Minnesota 55403

ph: 612-492-4000  
ryancompanies.com

space, access to skilled labor and public transportation. For these reasons, we believe the probability for future office development at this location is low.

However, we believe healthcare is the one subset of office development that has potential at this location. The medical office building Ryan developed directly to the West of the land under consideration has been successful and we feel there may some, albeit limited additional demand for medical office space in the future. At this time, we believe the approximate 4.5 acres that would remain available to the West of the proposed residential development is sufficient to support the future medical office demand at this location.

Anecdotally, as it relates to other land uses at this location; we believe retail is not ideal at this location as retail users will naturally be drawn to the available land at the NE quadrant of 93<sup>rd</sup> and Colorado where there are synergies with HyVee and future retail uses. Similarly, Business Park users will be drawn to the available land on the West side of Zane where there are surrounding compatible uses such as Star Exhibits, LDI, Olympus and others.

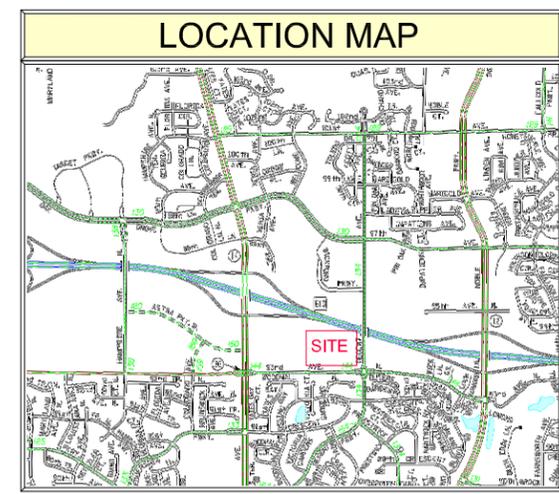
Lastly, Ryan Companies US, Inc. is not involved in the proposed transaction between the Seeds and the residential developer. Ryan would receive no financial benefit from this development progressing or not progressing. This letter is merely a statement of our opinion on land use in this immediate neighborhood and we believe based on our knowledge of the proposal that a residential use would be appropriate at this location given the surrounding land uses.

Feel free to contact us with additional questions.

Sincerely,

  
Casey Hankinson  
SVP, National Build to Suit

  
Dan Mueller  
Director of Real Estate Development



**SHEET INDEX TABLE**

SHEET	Description
SP	Preliminary Site Plan
ALTA	ALTA
PP	Preliminary Plat
UP	Preliminary Utility Plan
GP	Preliminary Grading Plan
EC	Preliminary Erosion Control Plan

**PREPARED BY**

ENGINEER  
**SATHRE-BERGQUIST, INC.**  
 150 SOUTH BROADWAY  
 WAYZATA, MINNESOTA 55391  
 PHONE: (952) 476-8000  
 FAX: (952) 476-0104  
 CONTACT: ROBERT S. MOLSTAD, P.E.  
 EMAIL: MOLSTAD@SATHRE.COM

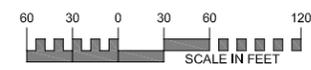
**PREPARED FOR**

DEVELOPER  
**PULTE HOMES OF MINNESOTA**  
 7500 FLYING CLOUD DRIVE  
 SUITE 670  
 EDEN PRAIRIE, MN 55344  
 CONTACT:  
 CHAD ONGSGARD  
 PHONE: (952) 229-0723  
 EMAIL: CHAD.ONGSGARD@PULTEGROUP.COM

**DESIGN DATA**

28' B-B PRIVATE STREET

**SETBACKS**  
 Flyab - 25 ft (to back of curb)  
 Ryab - 60 ft (to Hwy 610 ROW)  
 Ryab - 40 ft (Regent Ave N. & 93rd Ave N. ROW)  
 Bldg to Bldg Separation - 20 ft



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DRAWING NAME	NO.	BY	DATE	REVISIONS
SHEETS -SP	01	MJV	06/25/19	CITY COMMENT REVISIONS
DRAWN BY				
CHECKED BY				
DATE				
05/31/19				

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*Robert S. Molstad*  
 ROBERT S. MOLSTAD, P.E.  
 Date: 05/31/19 Lic. No. 26428

**ENGINEERS SURVEYORS**  
**DESIGNERS PLANNERS**

**SATHRE-BERGQUIST, INC.**  
 150 SOUTH BROADWAY WAYZATA, MN. 55391 (952) 476-6000

CITY PROJECT NO.  
 ---

BROOKLYN PARK,  
 MINNESOTA

**PRELIMINARY SITE PLAN**

**PEMBERLY**

**PULTE HOMES OF MINNESOTA, LLC**

FILE NO.  
 72905-439

SP  
 SP





**DESCRIPTION OF PROPERTY SURVEYED**

Outlet B, Astra Village 4th Addition.

**GENERAL NOTES**

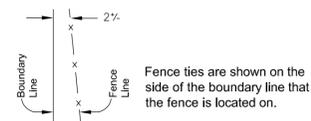
- Site Address:** 5300 94th Ave. N. Brooklyn Park, Minnesota 55443
- Flood Zone Information:** This property appears to lie in Zone X (area determined to be outside of the 0.2% annual chance floodplain) per Flood Insurance Rate Map, Community Panel No. 27053C0088F and 27053C0201F, effective date of November 4, 2016.
- Parcel Area Information:** Gross Area: 832,407 s.f. - 19.109 acres
- Benchmark:** Elevations are based on Hennepin County Station Name: JOSH which has an elevation of: 894.52 feet (NAVD88).
- Zoning Information:** The current Zoning for the subject property is TC (Town Center District) per the City of Brooklyn Park's zoning map dated July 11, 2016. The setback, height, and floor space area restrictions for said zoning designation are as follows:  
  
We have not received the current zoning classification from the insurer.
- Utilities:** We have shown the location of utilities on the surveyed property by observed evidence only. There may be underground utilities encumbering the subject property we are unaware. Please note that we have not placed a Gopher State One Call for this survey. There may or may not be underground utilities in the mapped area, therefore extreme caution must be exercised before any excavation takes place on or near this site. Also, please note that seasonal conditions may inhibit our ability to visibly observe all the utilities located on the subject property before digging. You are required by law to notify Gopher State One Call at least 48 hours in advance at 651/454-0002.

To: Pulte Homes of Minnesota LLC, a Minnesota limited liability company; Benjamin W. McCleary and Walter B. Cotter, as Trustees, under Trust Agreement dated March 19, 1976, with Fred M. Seed as Donor for James Michael Seed; and Stewart Title Guaranty Company.

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1 - 5, 8, and 11 of Table A thereof. The field work was completed on April 10, 2019.

Date of Plat or Map: April 22, 2019

*Jared J. Averbeck*  
 Jared J. Averbeck, PLS Minnesota License No. 53642  
 javerbeck@sathre.com

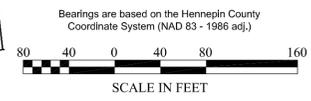
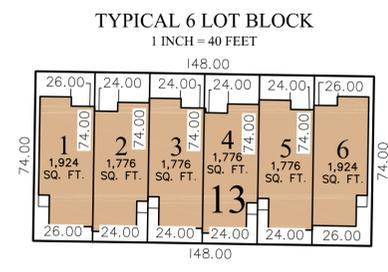
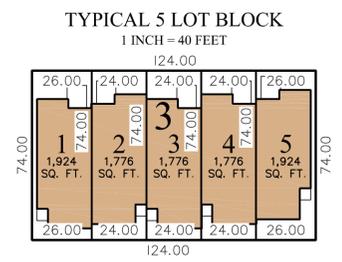


**PREPARED BY**

SURVEYOR  
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**PREPARED FOR**

DEVELOPER  
 PULTE HOMES OF MINNESOTA  
 7500 FLYING CLOUD DRIVE  
 SUITE 670  
 EDEN PRAIRIE, MN 55344  
 CONTACT:  
 CHAD ONSGARD  
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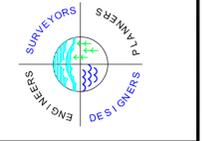


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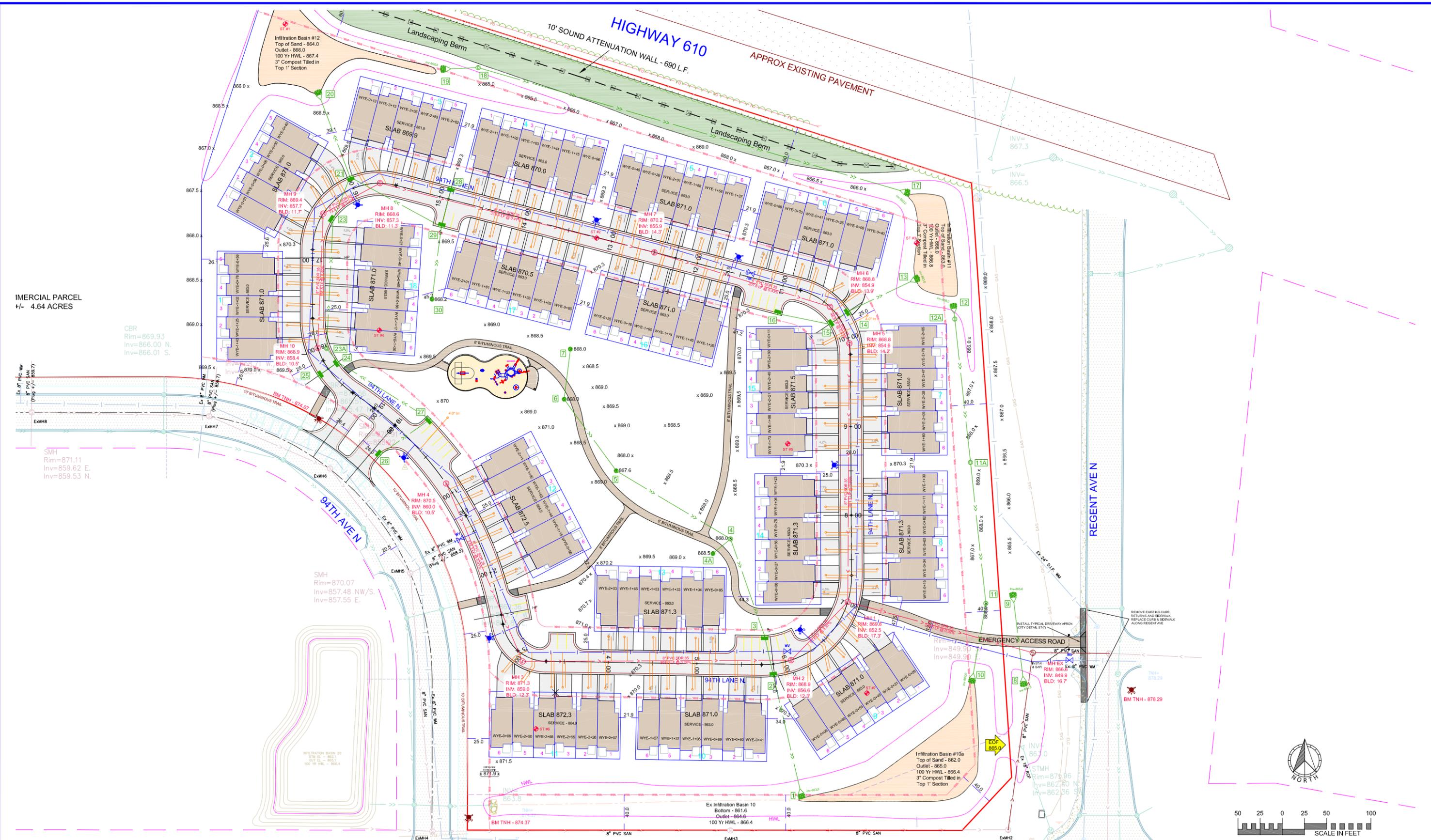
NO.	BY	DATE	REVISION
1	JJA	6/25/2019	Drainage and Utility Easements
	JJA		DRAWN
	JJA		CHECKED
	DSP		DATE
		04/09/2019	

**PRELIMINARY PLAT**  
 PEMBERLY  
 PREPARED FOR:  
 PULTE HOMES OF MINNESOTA, LLC

**SATHRE-BERGOUST, INC.**  
 150 SOUTH BROADWAY WAYZATA, MN. 55391 (952) 476-6000  
 WWW.SATHRE.COM



TWP.119 - RGE.21 - SEC.09  
 Project City: Brooklyn Park  
 Hennepin County  
 FILE NO.: 72905-439



COMMERCIAL PARCEL  
±/- 4.64 ACRES

CBR  
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Inv=866.00 N.  
Inv=866.01 S.

SMH  
Rim=871.11  
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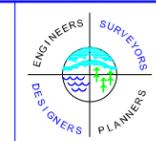
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Rim=870.07  
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Inv=857.55 E.

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DRAWING NAME	NO.	BY	DATE	REVISIONS
SHEETS-UTILITY	01	MJV	06/25/19	CITY COMMENT REVISIONS
DRAWN BY				
CHECKED BY				
DATE				
05/31/19				

I HEREBY CERTIFY THAT THIS PLAN OR SPECIFICATION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

*Robert S. Molstad*  
ROBERT S. MOLSTAD, P.E.  
Date: 05/31/19 Lic. No. 26428



**SATHRE-BERGQUIST, INC.**  
150 SOUTH BROADWAY WAYZATA, MN. 55391 (952) 476-6000

CITY PROJECT NO.  
BROOKLYN PARK,  
MINNESOTA

PRELIMINARY UTILITY PLAN  
PEMBERLY  
PULTE HOMES OF MINNESOTA, LLC.

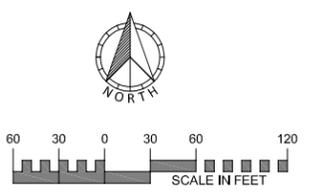
FILE NO.  
72905-439  
UP1  
UP1



- CONSTRUCTION NOTES**
- INSTALL SILT FENCE AS SHOWN ON PLAN, AS REQUIRED BY THE CITY OF BROOKLYN PARK, ELM CREEK WATERSHED DISTRICT OR DIRECTED BY THE ENGINEER.
  - THE WATER QUALITY POND MUST BE EXCAVATED AT THE BEGINNING OF GRADING OPERATIONS TO PROVIDE TEMPORARY STORM WATER DETENTION DURING CONSTRUCTION. SAND, CLAYS, AND SILTS MUST BE REMOVED FROM THE POND AS NECESSARY DURING CONSTRUCTION AND AT THE COMPLETION OF THE PROJECT. REFER TO SECTION 2.2 OF THE STORM WATER POLLUTION PREVENTION PLAN.
  - BEGIN GRADING, INSTALL PERFORATED RISER PIPE IN PONDS WHEN POND GRADING IS COMPLETE. TEMPORARY DRAINAGE PIPE SHALL BE USED FOR INTERMEDIATE DRAINAGE DURING THE CONSTRUCTION PERIOD AS NECESSARY AND DIRECTED BY THE ENGINEER. THE TEMPORARY DRAINAGE PIPES SHALL BE INCIDENTAL TO THE GRADING OPERATIONS. INSTALL SILT FENCE AROUND EXCAVATED POND, AFTER THE AS-BUILT ELEVATIONS HAVE BEEN VERIFIED BY THE ENGINEER.
  - INSPECT POND, SILT FENCE, AND ROCK ENTRANCE BERM AFTER ALL RAINFALL EVENTS AS REQUIRED BY THE NPDES PERMIT.
  - LINE ALL PONDS WITH A MINIMUM 4" ORGANIC SOILS & SEED SLOPES BETWEEN NWL AND 100 YR HWL WITH A WATER TOLERANT MIX. (OR AS NOTED)
  - REMOVE PERFORATED RISER PIPE WHEN STORM SEWER AND OUTLET STRUCTURE FOR PONDS ARE INSTALLED (INCIDENTAL).
  - POND - 10:1 BENCH (1 FOOT) THEN 4:1 MAX
  - LO & WO FINISHED PADS SHALL BE FLATTER THAN 3:1. ALL OTHER SLOPES 4:1 MAX (UNLESS NOTED)
  - RESTORATION -  $XXX$  ACRES PLUS WETLAND RESTORATION AREAS
    - RESTORE ALL DISTURBED AREAS WITH 4" TO 6" OF TOPSOIL OR EXISTING ON-SITE ORGANIC MTRL.
    - SEED ALL DISTURBED AREAS WITH MNDOT MIXTURE #250 AT A RATE OF 100 LBS./ACRE AND FERTILIZE WITH 20-0-10 AT 100 LBS./ACRE (UNLESS OTHERWISE NOTED)
    - SEED WETLAND BUFFER AREAS WITH MIX 35-241 (MESIC PRAIRIE GENERAL), TEMPORARY WETLAND 10 IMPACT-STATE SEED MIX 34-271, WETLAND EXCAVATION/IRIGATION AREA - STATE SEED MIX 34-181 (EMERGENCY WETLAND OR SIMILAR)
    - ONLY PHOSPHOROUS FREE FERTILIZER IS TO BE USED ON SITE.
    - MULCH WITH TYPE 1 AT A RATE OF 2 TONS/ACRE AND DISC ANCHOR IMMEDIATELY AFTER PLACEMENT. USE WOODFIBER BLANKET ON ALL SLOPES 3:1 (FT) OR GREATER
    - PLACE APPROVED STORM SEWER INLET PROTECTION IN OR AROUND ALL STORM SEWER INLETS AND MAINTAIN UNTIL STREET CONSTRUCTION IS COMPLETED.
    - MAINTAIN ALL SILT FENCE UNTIL TURF HAS BEEN ESTABLISHED.
    - RESTORATION WORK WILL BE COMPLETED WITHIN 72 HOURS OF GRADING COMPLETION.
  - SILT FENCE, BEFORE GRADING -  $XXX$  LF  
AFTER GRADING -  $XXX$  LF
  - TREE FENCE, BEFORE GRADING -  $N/A$  LF
  - EROSION BLANKET - 0 SY - AS REQUIRED ON ALL SLOPES 3:1 OR LESS
- GENERAL NOTES**
- THE GRADING CONTRACTOR IS RESPONSIBLE FOR ALL STORM WATER INSPECTIONS ACCORDING TO THE MPCA STORM WATER PERMIT. THIS INCLUDES BOTH WEEKLY INSPECTIONS AND INSPECTIONS DONE AFTER A 0.5" RAIN EVENT. A COPY OF THE INSPECTION REPORT MUST BE EMAILED TO THE ENGINEER AND DEVELOPER ON A WEEKLY BASIS.
  - THE CONTRACTOR SHALL PLACE INLET PROTECTION DEVICES FOR ALL STORM SEWER INLETS (EXISTING AND PROPOSED) AND MAINTAIN THEM AS AN EFFECTIVE SILT CONTROL DEVICE. INLET PROTECTION SHALL BE REMOVED WHEN RESTORATION HAS BEEN ESTABLISHED.
  - ALL RETAINING WALLS WILL REQUIRE A STRUCTURAL DESIGN, A BUILDING PERMIT & A FINAL INSPECTION REPORT (IF APPLICABLE)
  - A 1'-2" CRUSHED ROCK ENTRANCE BERM SHALL BE PLACED AT THE SITE ENTRANCE, TO REPLACE SILT FENCE, AND MINIMIZE EROSION ON TO THE STREETS. THE ROCK BERMS SHALL BE THE WIDTH OF THE ENTRANCE AND 2 FEET HIGH WITH 4:1 SLOPES. (SEE DETAIL)
  - THE CONTRACTOR SHALL MAINTAIN POSITIVE DRAINAGE AWAY FROM THE BUILDING PAD AND STREET AREAS THROUGHOUT CONSTRUCTION.
  - THE CONTRACTOR SHALL ATTEMPT TO PREVENT SOIL MATERIALS FROM LEAVING THE SITE BY EROSION AND VEHICLE WHEEL TRACKING. HE SHALL BE RESPONSIBLE FOR CLEANING OF STREET, BOULEVARD AND UTILITY FACILITIES THAT RECEIVE ANY ERODED OR TRACKED SOIL MATERIAL OR OTHER CONSTRUCTION DEBRIS OR MATERIAL. THE GRADING CONTRACTOR WILL BE REQUIRED TO PROVIDE STREET SWEEPING ON HUNTER DRIVE DURING THE GRADING OPERATIONS, IF REQUIRED.
  - EXISTING UTILITIES SHOWN ARE SHOWN IN AN APPROXIMATE WAY ONLY. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ANY AND ALL EXISTING UTILITIES BEFORE COMMENCING WORK. HE AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES ARISING OUT OF HIS FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL EXISTING UTILITIES.

- ON-SITE BMPs**
- NURP POND - NURP POND WILL BE UTILIZED TO MEET OR EXCEED QUALITY AND RATE CONTROL REQUIREMENTS.
  - SKIMMERS - THE POND OUTLET STRUCTURE INCLUDES A SUBMERGED INLET PIPE TO ALLOW SKIMMING. (Utility Contractor)
  - RIP RAP - RIP RAP WILL BE UTILIZED AT ALL APRONS FOR ENERGY DISSIPATION AND PROVIDE SEDIMENT CONTROL. (Utility Contractor)
  - INLET PROTECTION - INLET PROTECTION WILL BE INSTALLED AND MAINTAINED IN ALL CATCH BASINS & REAR YARD STRUCTURES. (WIMCO'S OR EQUAL) (Utility Contractor)
  - SLOPE STABILIZATION - SILT FENCE WILL BE INSTALLED ALONG DOWN GRADIENT GRADING LIMITS AND WOODFIBER BLANKET WILL BE UTILIZED ON ALL SLOPES 3:1 OR GREATER TO PROVIDE ADEQUATE SLOPE STABILIZATION. (Grading Contractor)
  - BOROLLS - BOROLLS WILL BE INSTALLED ALONG REAR YARD SWALES TO PREVENT SEDIMENT FROM REACHING THE NURP POND AND ULTIMATELY DOWNSTREAM WETLANDS (Grading Contractor).
  - INFILTRATION AREAS - INFILTRATION AREAS WILL BE UTILIZED TO REDUCE THE AMOUNT OF RUNOFF FROM THE INCREASED HARDSURFACE. (Grading Contractor)
  - STREET SWEEPING - STREET SWEEPING WILL BE DONE A MINIMUM OF ONCE PER WEEK OR AS NEEDED TO MINIMIZE DUST CONTROL AND VEHICLE TRACKING. (Grading and Utility Contractor)
  - PHOSPHOROUS FREE FERTILIZER - PHOSPHOROUS FREE FERTILIZER WILL ALSO BE USED ON SITE.
  - ALL CONCRETE WASHOUT WASTE PRODUCED SHALL BE REMOVED FROM THE SITE. (Utility Contractor)
  - ADDITIONAL BMPs SHALL BE INSTALLED AROUND ALL WETLANDS WHERE GRADING IS TO OCCUR WITHIN 50FT. SUCH BMPs INCLUDE DOZER CUT DITCH.

EXISTING UTILITIES SHOWN ARE SHOWN IN AN APPROXIMATE WAY ONLY. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ANY AND ALL EXISTING UTILITIES BEFORE COMMENCING WORK. HE AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES ARISING OUT OF HIS FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL EXISTING UTILITIES.



DRAWING NAME	NO.	BY	DATE	REVISIONS
SHEETS - GRADING	01	MJV	06/25/19	CITY COMMENT REVISIONS
DRAWN BY				
CHECKED BY				
DATE				
05/31/19				

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*Robert S. Molstad*  
 ROBERT S. MOLSTAD, P.E.  
 Date: 05/31/19 Lic. No. 26428

**SATHRE-BERGQUIST, INC.**  
 150 SOUTH BROADWAY WAYZATA, MN. 55391 (952) 476-6000

ENGINEERS SURVEYORS  
 DESIGNERS PLANNERS

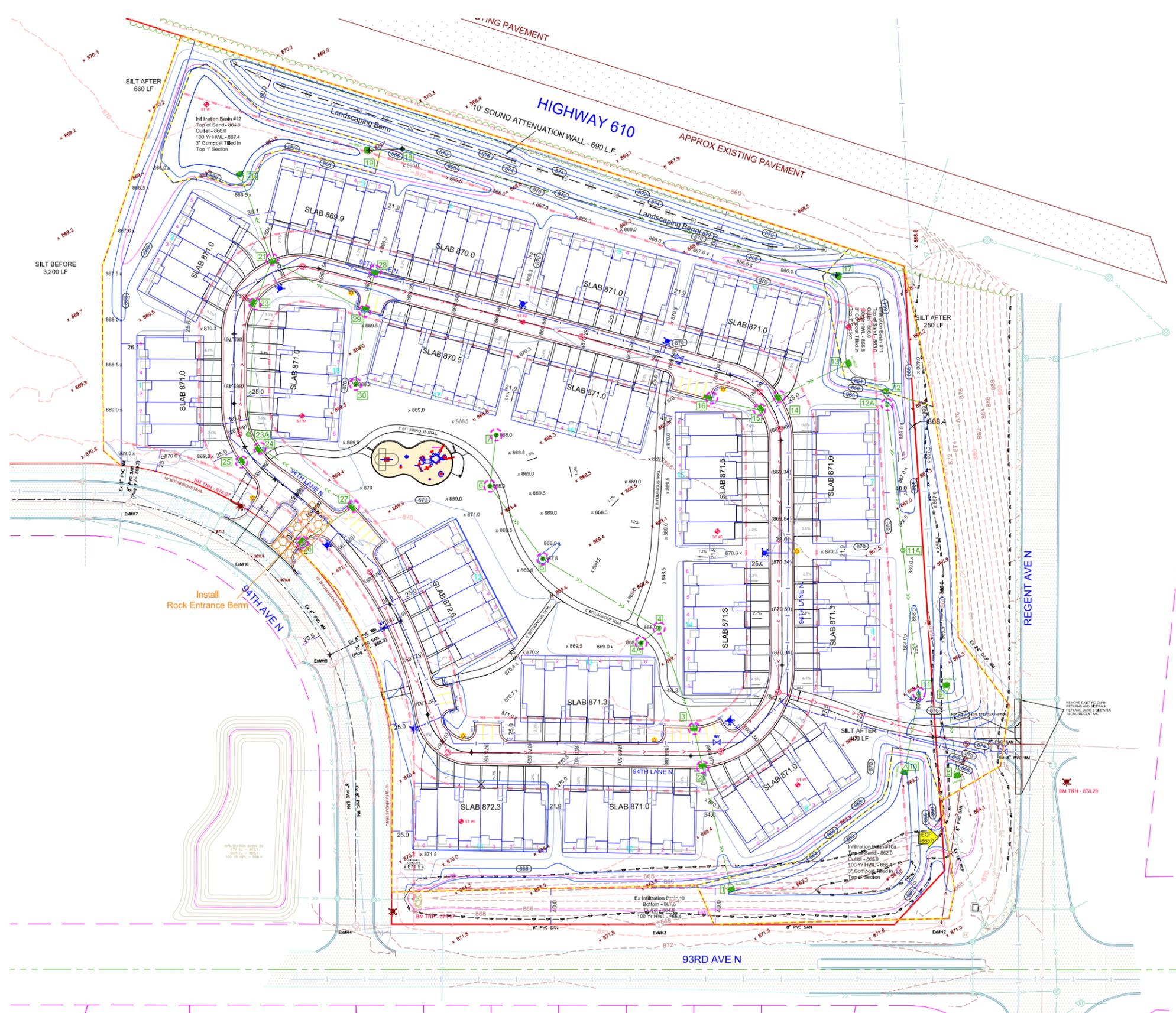
CITY PROJECT NO. ---

**PRELIMINARY GRADING PLAN**

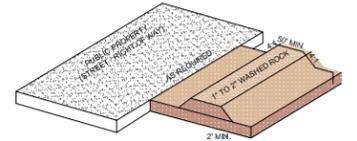
**PEMBERLY**  
**PULTE HOMES OF MINNESOTA, LLC**

BROOKLYN PARK, MINNESOTA

FILE NO. 72905-439  
**GP1**  
**GP1**

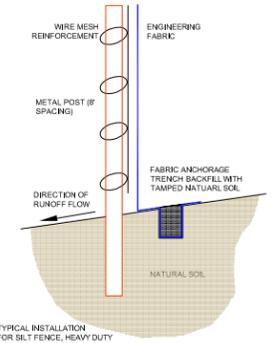


-  ROCK ENTRANCE BERM
-  SILT FENCE
-  POST GRADING SILT FENCE
-  BIO-ROLL
-  CONCRETE WASHOUT
-  INLET PROTECTION
-  WOODFIBER BLANKET



NOTE:  
ROCK SHOULD BE 1" TO 2" IN SIZE, SUCH AS MNDOT CA-1 OR CA-2 COARSE AGGREGATE (WASHED).  
A GEOTEXTILE FABRIC MAY BE USED UNDER ROCK TO PREVENT MIGRATION OF THE UNDERLYING SOIL INTO THE ENTRANCE BERM.

ROCK ENTRANCE BERM



TYPICAL INSTALLATION FOR SILT FENCE, HEAVY DUTY  
DETAIL DRAWING ST-18  
CITY OF BROOKLYN PARK

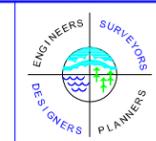
DRAWING NAME	NO.	BY	DATE	REVISIONS
SHEETS EC	01	MJV	06/25/19	CITY COMMENT REVISIONS
DRAWN BY		ERJ		
CHECKED BY		RSM		
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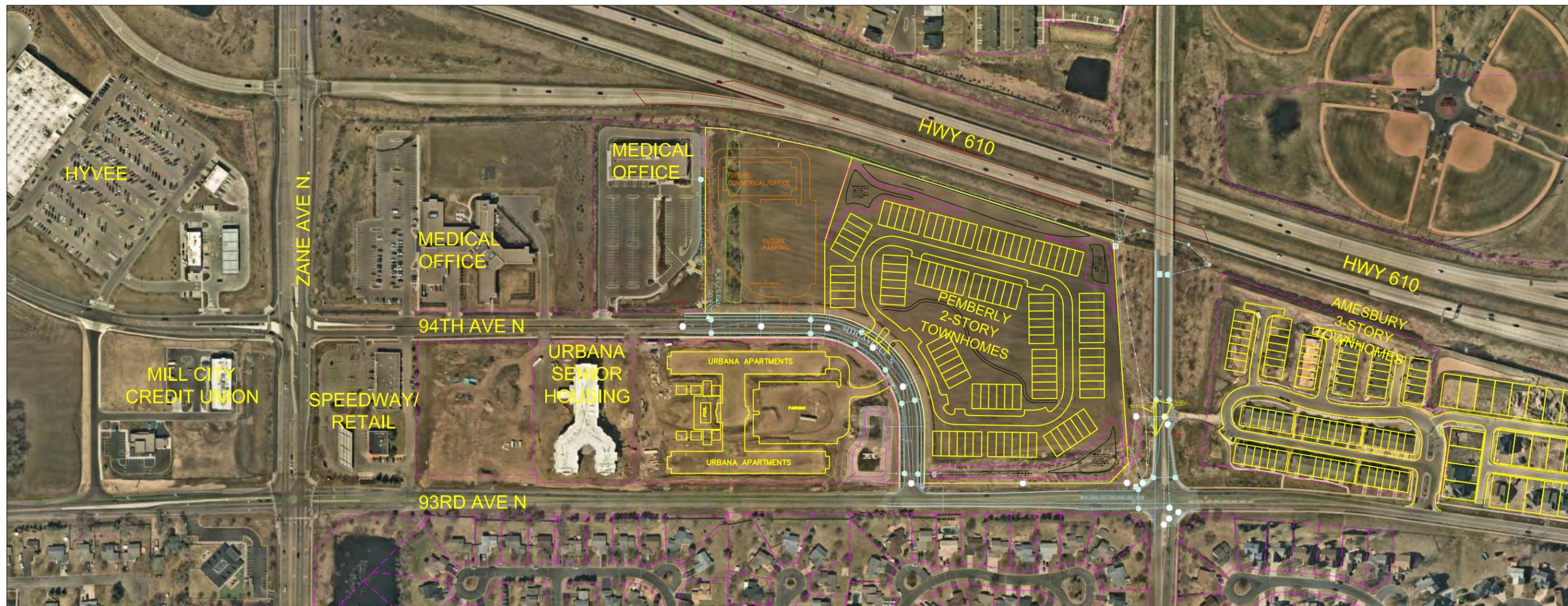
**SATHRE-BERGQUIST, INC.**  
150 SOUTH BROADWAY WAYZATA, MN. 55391 (952) 476-6000

CITY PROJECT NO.  
BROOKLYN PARK, MINNESOTA

EROSION CONTROL PLAN  
PEMBERLY  
PULTE HOMES OF MINNESOTA, LLC

FILE NO.  
72905-439  
EC1  
EC1

# PEMBERLY DEVELOPMENT PLAN



DRAWING NAME
DEV - SEED
DRAWN BY
ERJ
CHECKED BY
RSM
DATE
05/31/19


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 150 SOUTH BROADWAY WAYZATA, MN. 55391 (952) 476-6000

CITY PROJECT NO.
--
BROOKLYN PARK, MINNESOTA

DEVELOPMENT PLAN  
**PEMBERLY**  
 PULTE HOMES OF MINNESOTA, LLC

FILE NO. 72905-439
DV
DV



**1 SITE PLAN**  
SCALE: 1" = 60'

**LANDSCAPE DESIGN LEGEND**

1	ENTRY MONUMENT
2	DIRECTIONAL MONUMENT
3	MAILBOX STATION
4	PARK/ TOT-LOT
5	8' BITUMINOUS NEIGHBORHOOD PATH
6	10' SOUND ATTENUATION WALL (690 L.F.) AND BUFFER PLANTINGS
7	BITUMINOUS NEIGHBORHOOD CONNECTION PATH
8	SOUTHERN BOUNDARY BUFFER PLANTINGS
9	STREET TREE PLANTINGS
10	WESTERN BOUNDARY BUFFER PLANTINGS
11	EASTERN BOUNDARY BUFFER PLANTINGS

**PLANTING CODE:**  
5 OVERSTORY TREES PER UNIT  
1 ORNAMENTAL TREE PER UNIT  
5 SHRUBS PER UNIT

**SUBSTITUTION RATIO:**  
10:1 NON RESIDENTIAL USE SHRUBS FOR 1 OVERSTORY TREE (2"BB)

105 TOTAL UNITS

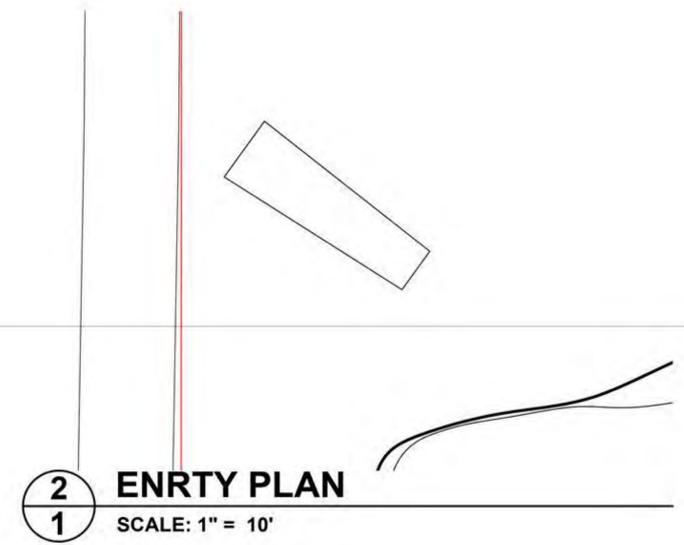
	REQUIRED
OVERSTORY	525
ORNAMENTAL	105
SHRUBS	525

**PROPOSED PLANTINGS:**  
OVERSTORY TREES (4"BB/2:1)- 91  
CONIFEROUS TREES (12"BB/2:1)- 127  
ORNAMENTAL TREES (1.5"BB)- 105  
SHRUBS- 543

**PROPOSED ADJUSTED TOTALS:**

	REQUIRED	PROPOSED
OVERSTORY*	262	262
ORNAMENTAL	105	105
SHRUBS	525	525

\*SUBSTITUTE SHRUBS: 440 (44)



**3 MONUMENT ELEVATION**  
NO SCALE

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SIGNED: *[Signature]*

DATE: 06-25-19 REG. #: 20144

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(952) 361-0644 / www.norbylandscape.com

CITY PROJECT NO.  
**BROOKLYN PARK, MN**

**PRELIMINARY LANDSCAPE PLAN**  
**PEMBERLY**  
**PULTE GROUP**

FILE NO.  
**L1/L4**



**PLANT SCHEDULE**

CONIFEROUS REQUIRED TREES	CODE	BOTANICAL NAME / COMMON NAME	CONT.	QTY	DETAIL
	BF	Abies balsamea / Balsam Fir	12' BB	14	
	LA	Larix laricina / American Larch	12' BB	11	
	NS	Picea abies / Norway Spruce	12' BB	6	
	BH	Picea glauca 'densata' / Black Hills Spruce	12' BB	29	
	FS	Picea pungens 'Fat Albert' / Fat Albert Spruce	12' BB	24	
	NP	Pinus resinosa / Norway Pine	12' BB	14	
	WP	Pinus strobus / White Pine	12' BB	29	
ORNAMENTAL REQUIRED TREES	CODE	BOTANICAL NAME / COMMON NAME	CONT.	QTY	DETAIL
	TH	Crataegus crus-galli 'inermis' / Thornless Hawthorn	1.5' BB	16	SINGLE STRAIGHT LEADER
	CA	Malus x 'Pink Spires' / Pink Spires Crabapple	1.5' BB	28	SINGLE STRAIGHT LEADER
	PF	Malus x 'Prairiefire' / Prairiefire Crabapple	1.5' BB	16	SINGLE STRAIGHT LEADER
	MA	Sorbus decora / Showy Mountain Ash	1.5' BB	20	SINGLE STRAIGHT LEADER
	LT	Syringa reticulata 'Ballance' / Snowdance Lilac Tree	1.5' BB	25	SINGLE STRAIGHT LEADER
OVERSTORY REQUIRED TREES	CODE	BOTANICAL NAME / COMMON NAME	CONT.	QTY	DETAIL
	RM	Acer rubrum 'Northwood' / Northwood Red Maple	4' BB	15	SINGLE STRAIGHT LEADER
	SM	Acer saccharum 'Green Mountain' / Green Mountain Sugar Maple	4' BB	4	SINGLE STRAIGHT LEADER
	FM	Acer x freemanii 'Jeffered' / Autumn Blaze Maple	4' BB	8	SINGLE STRAIGHT LEADER
	HA	Celtis occidentalis / Common Hackberry	4' BB	8	SINGLE STRAIGHT LEADER
	HL	Gleditsia triacanthos inermis 'Impcole' / Imperial Honeylocust	4' BB	6	SINGLE STRAIGHT LEADER
	KC	Gymnocladus dioica / Kentucky Coffee Tree	4' BB	8	SINGLE STRAIGHT LEADER
	SO	Quercus bicolor / Swamp White Oak	4' BB	9	SINGLE STRAIGHT LEADER
	RO	Quercus rubra / Red Oak	4' BB	15	SINGLE STRAIGHT LEADER
	AL	Tilia americana 'Sentry' / American Linden	4' BB	4	SINGLE STRAIGHT LEADER
	AE	Ulmus americana 'Princeton' / American Elm	4' BB	5	SINGLE STRAIGHT LEADER
STREET TREES	CODE	BOTANICAL NAME / COMMON NAME	CONT.	QTY	DETAIL
	NM2	Acer platanoides 'Columnare' / Columnar Norway Maple	4' BB	2	SINGLE STRAIGHT LEADER
	RM2	Acer rubrum 'Northwood' / Northwood Red Maple	4' BB	1	SINGLE STRAIGHT LEADER
	FM2	Acer x freemanii 'Jeffered' / Autumn Blaze Maple	4' BB	1	SINGLE STRAIGHT LEADER
	BA2	Fraxinus nigra / Black Ash	4' BB	1	SINGLE STRAIGHT LEADER
	HL2	Gleditsia triacanthos inermis 'Impcole' / Imperial Honeylocust	4' BB	1	SINGLE STRAIGHT LEADER
	SO2	Quercus bicolor / Swamp White Oak	4' BB	1	SINGLE STRAIGHT LEADER
	AL2	Tilia cordata 'Greenspire' / Greenspire Linden	4' BB	1	SINGLE STRAIGHT LEADER
	AE2	Ulmus 'New Horizon' / New Horizon Elm	4' BB	1	SINGLE STRAIGHT LEADER
SHRUBS		BOTANICAL NAME / COMMON NAME	SIZE	QTY	
		Amelanchier canadensis 'Glenform' / Rainbow Pillar Serviceberry - Multi Stem	5 gal	22	
		Aronia melanocarpa var. elata / Black Chokeberry	5 gal	14	
		Cornus alba 'Cardinal' / Red Twig Dogwood	5 gal	62	
		Rhus typhina 'Laciniata' / Laceleaf Staghorn Sumac	5 gal	12	
		Syringa meyeri 'Palbin' / Dwarf Korean Lilac	5 gal	20	
		Syringa patula 'Miss Kim' / Miss Kim Lilac	5 gal	104	
		Viburnum lantana 'Wayfaring' / Wayfaring Viburnum	7 gal	86	
		Viburnum trilobum / Highbush Cranberry	5 gal	20	

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SIGNED: 

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CITY PROJECT NO.  
BROOKLYN PARK, MN

**PRELIMINARY LANDSCAPE PLAN**  
PEMBERLY  
PULTE GROUP

FILE NO.  
L2 / L4



### 6 UNIT PLANT SCHEDULE

SHRUBS	BOTANICAL NAME / COMMON NAME	SIZE	QTY
SBC	Amelanchier alnifolia 'Regent' / Saskatoon Serviceberry (Clump)	5 gal	2
HAN	Hydrangea arborescens 'Annabelle' / Annabelle Hydrangea	5 gal	2
JDW	Ilex verticillata 'Jim Dandy' / Jim Dandy Winterberry	5 gal	1
MWP	Potentilla fruticosa 'McKay's White' / McKay's White Potentilla	5 gal	4
RWL	Rhododendron azalea 'White Lights' / White Lights Azalea	5 gal	2
PJM	Rhododendron x 'PJM' / P.J.M. Rhododendron	5 gal	1
VBM	Viburnum dentatum 'Blue Muffin' / Blue Muffin Viburnum	5 gal	2
		TOTAL	14

EVERGREEN SHRUBS	BOTANICAL NAME / COMMON NAME	SIZE	QTY
BSJ	Juniperus squamata 'Blue Star' / Blue Star Juniper	5 gal	4
SCP	Pinus mugo 'Sherwood Compact' / Mugo Pine	5 gal	12
		TOTAL	16

GRASSES	BOTANICAL NAME / COMMON NAME	SIZE	QTY
KFG	Calamagrostis x acutiflora 'Karl Foerster' / Karl Foerster Grass	1 gal	35
MIS	Miscanthus sinensis 'Purpurascens' / Flame Grass Miscanthus	1 gal	7

PERENNIALS	BOTANICAL NAME / COMMON NAME	SIZE	QTY
ASV	A. chinensis 'Visions' / Visions Astilbe	1 gal	4
YAM	Achillea x 'Moonshine' / Moonshine Yarrow	1 gal	3
ORA	Allium senescens glaucum / Ornamental Allium	1 gal	36
MBC	C. verticillata 'Moonbeam' / Moonbeam Coreopsis	1 gal	16
CBU	H. 'Plum Pudding' / Plum Pudding Coral Bells	1 gal	6
DLS	Hemerocallis 'Ruby Stella' / Ruby Stella Daylily	1 gal	4
HSB	Hosta x 'Blue Angel' / Blue Angel Hosta	1 gal	1
HSF	Hosta x 'Frances Williams' / Frances Williams Hosta	1 gal	3
LGR	L. stenocephala 'The Rocket' / The Rocket Ligularia	1 gal	4
LUP	L. 'Popsicle Blue' / Popsicle Blue Lupine	1 gal	12
SHD	Lencantherum x superbum 'Becky' / Shasta Daisy	1 gal	6
MNG	M. didyma 'Grand Mum' / Grand Mum Monarda	1 gal	6
MNR	M. didyma 'Raspberry Wine' / Raspberry Wine Bee Balm	1 gal	6
RSB	P. atriplicifolia 'Blue Jean Baby' / Blue Russian Sage	1 gal	20
BES	Rudbeckia hirta / Galstrum Black Eyed Susan	1 gal	6
VER	V. 'Mona Lisa Smile' / Mona Lisa Smile Veronica	1 gal	4

**1 6 UNIT PLANTING PLAN**  
SCALE: 1" = 10'

### 5 UNIT PLANT SCHEDULE

SHRUBS	BOTANICAL NAME / COMMON NAME	SIZE	QTY
SBC	Amelanchier alnifolia 'Regent' / Saskatoon Serviceberry (Clump)	5 gal	2
HAN	Hydrangea arborescens 'Annabelle' / Annabelle Hydrangea	5 gal	3
JDW	Ilex verticillata 'Jim Dandy' / Jim Dandy Winterberry	5 gal	1
MWP	Potentilla fruticosa 'McKay's White' / McKay's White Potentilla	5 gal	2
RWL	Rhododendron azalea 'White Lights' / White Lights Azalea	5 gal	1
PJM	Rhododendron x 'PJM' / P.J.M. Rhododendron	5 gal	1
VBM	Viburnum dentatum 'Blue Muffin' / Blue Muffin Viburnum	5 gal	2
		TOTAL	12

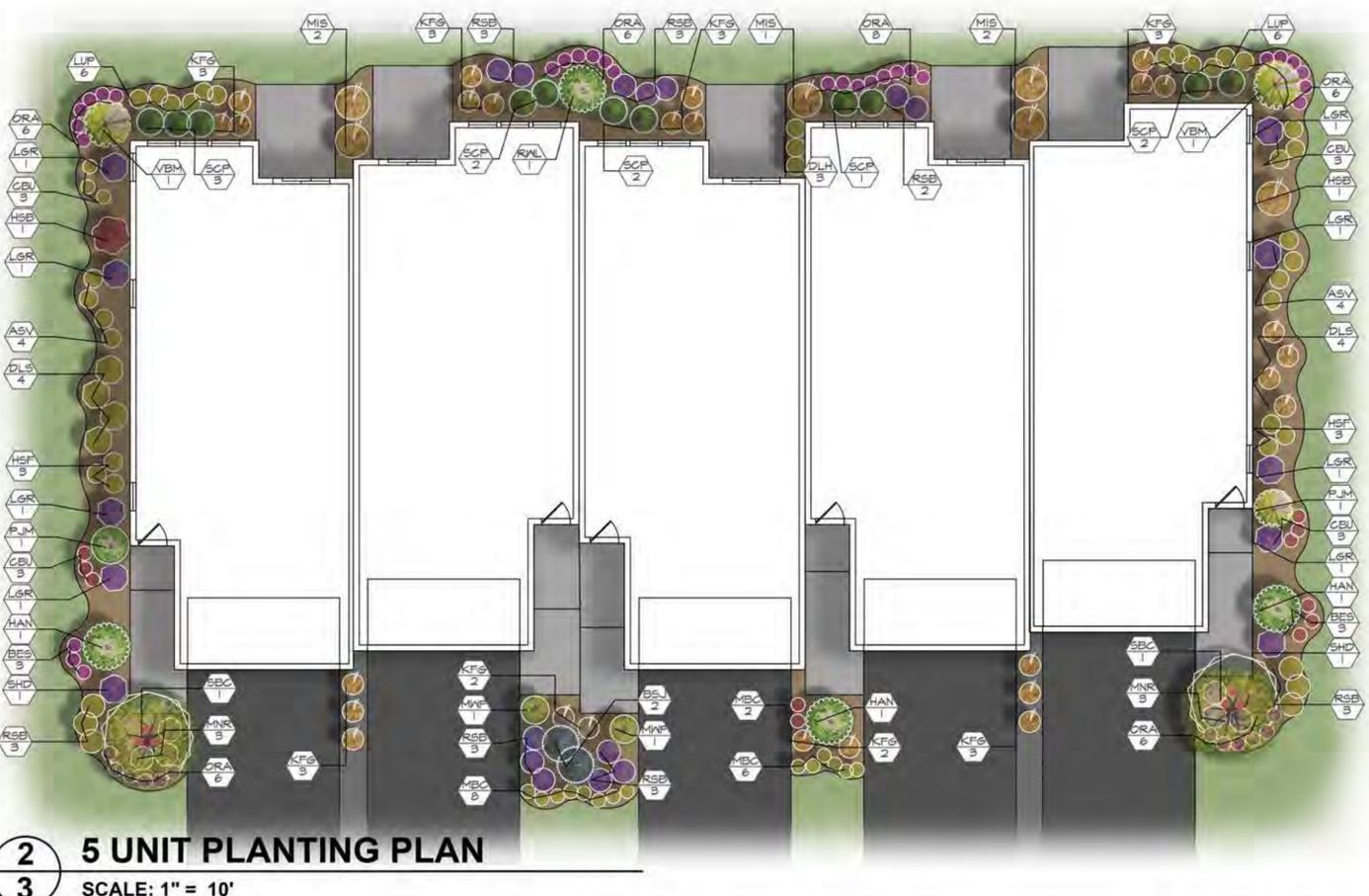
EVERGREEN SHRUBS	BOTANICAL NAME / COMMON NAME	SIZE	QTY
BSJ	Juniperus squamata 'Blue Star' / Blue Star Juniper	5 gal	2
SCP	Pinus mugo 'Sherwood Compact' / Mugo Pine	5 gal	11
		TOTAL	13

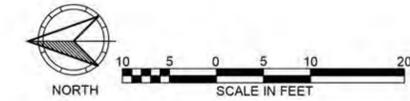
GRASSES	BOTANICAL NAME / COMMON NAME	SIZE	QTY
KFG	Calamagrostis x acutiflora 'Karl Foerster' / Karl Foerster Grass	1 gal	26
MIS	Miscanthus sinensis 'Purpurascens' / Flame Grass Miscanthus	1 gal	6

PERENNIALS	BOTANICAL NAME / COMMON NAME	SIZE	QTY
ASV	A. chinensis 'Visions' / Visions Astilbe	1 gal	4
YAM	Achillea x 'Moonshine' / Moonshine Yarrow	1 gal	3
ORA	Allium senescens glaucum / Ornamental Allium	1 gal	36
MBC	C. verticillata 'Moonbeam' / Moonbeam Coreopsis	1 gal	16
CBU	H. 'Plum Pudding' / Plum Pudding Coral Bells	1 gal	6
DLH	Hemerocallis x 'Hyperion' / Hyperion Daylily	1 gal	3
DLS	Hemerocallis 'Ruby Stella' / Ruby Stella Daylily	1 gal	4
HSB	Hosta x 'Blue Angel' / Blue Angel Hosta	1 gal	1
HSF	Hosta x 'Frances Williams' / Frances Williams Hosta	1 gal	3
LGR	L. stenocephala 'The Rocket' / The Rocket Ligularia	1 gal	4
LUP	L. 'Popsicle Blue' / Popsicle Blue Lupine	1 gal	12
SHD	Lencantherum x superbum 'Becky' / Shasta Daisy	1 gal	6
MNG	M. didyma 'Grand Mum' / Grand Mum Monarda	1 gal	6
MNR	M. didyma 'Raspberry Wine' / Raspberry Wine Bee Balm	1 gal	6
RSB	P. atriplicifolia 'Blue Jean Baby' / Blue Russian Sage	1 gal	19
BES	Rudbeckia hirta / Galstrum Black Eyed Susan	1 gal	6
VER	V. 'Mona Lisa Smile' / Mona Lisa Smile Veronica	1 gal	4



**2 5 UNIT PLANTING PLAN**  
SCALE: 1" = 10'



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CITY PROJECT NO.  
BROOKLYN PARK, MN

PRELIMINARY LANDSCAPE PLAN  
PEMBERLY  
PULTE GROUP

FILE NO.  
L3  
L4

GENERAL NOTES:  
 ALL TREES SHALL HAVE A MINIMUM DEPTH OF 6" HARDWOOD BARK MULCH - 6' DIAMETER RING AROUND THE BASE OF THE TREE. KEEP MULCH OFF TREE TRUNK.

ALL STREET FRONTAGE TREE PITS AND BACK FILL SHALL BE FREE OF CLASS V OR SIMILAR MATERIAL. TREES ARE TO BE BACKFILLED WITH NATIVE ON SITE TOPSOIL.

ALL STREET FRONTAGE TREES SHALL BE PLANTED 5 FEET BACK OF CURB WHEN SIDEWALK OR TRAIL IS PRESENT; 8 FEET BACK OF CURB WITH NO SIDEWALK OR TRAIL.

PLAN REPRESENTS APPROXIMATE LOCATION OF TREES AND SERVICE UTILITIES, THE LANDSCAPE CONTRACTOR SHALL BE RESPONSIBLE FOR THE FIELD VERIFICATION OF UTILITY LOCATION BY CALLING GOPHER ON STATE PRIOR TO BEGINNING WORK, TO ENSURE ALL TREES ARE PLANTED OUTSIDE OF 10' UTILITY EASEMENT, MEASURED FROM TREE TRUNK TO PIPE. THE LANDSCAPE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION AND REPAIR OF ALL DAMAGED UTILITIES AS A RESULT OF LANDSCAPING CONSTRUCTION AT NO COST TO THE OWNER

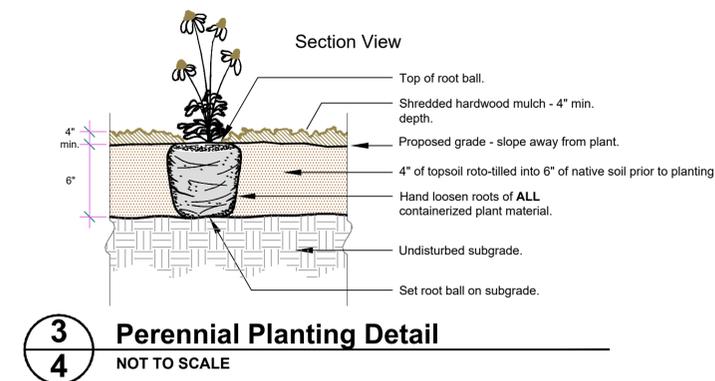
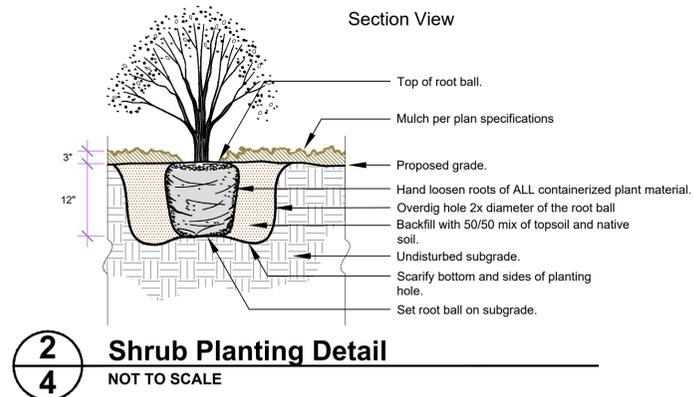
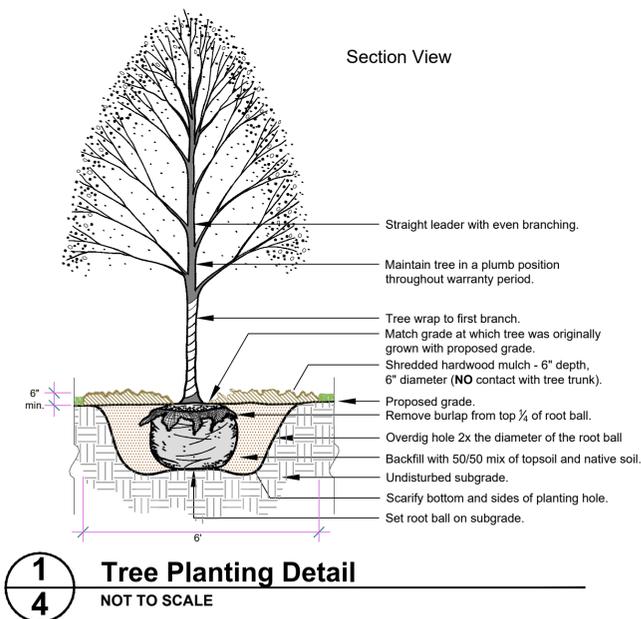
MINIMUM OF 2 ROWS OF SOD BEHIND CURB.  
 AREAS WITH SIDEWALKS SHALL BE SODDED FROM BACK OF CURB TO SIDEWALK. SOD SHALL MEET MNDOT 3878 C SPECIFICATION FOR SALT TOLERANCE.

ALL RESIDENTIAL LOTS SHALL BE TEMPORARILY SEEDED WITH LOT COVER GRASS MIX.

THE LANDSCAPE ARCHITECT RESERVES THE RIGHT TO REJECT ANY PLANTS WHICH ARE DEEMED TO BE UNSATISFACTORY BEFORE, DURING OR AFTER INSTALLATION

THE LANDSCAPE CONTRACTOR SHALL REPAIR ALL DAMAGE TO THE SITE CAUSED BY INSTALLING THE LANDSCAPE ELEMENTS AT NO COST TO THE OWNER

THE LANDSCAPE CONTRACTOR SHALL BE RESPONSIBLE FOR THE FIELD VERIFICATION OF ALL EXISTING UTILITIES, BY CALLING GOPHER ON STATE PRIOR TO BEGINNING WORK. THE LANDSCAPE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION AND REPAIR OF ALL DAMAGED UTILITIES AS A RESULT OF LANDSCAPING CONSTRUCTION AT NO COST TO THE OWNER



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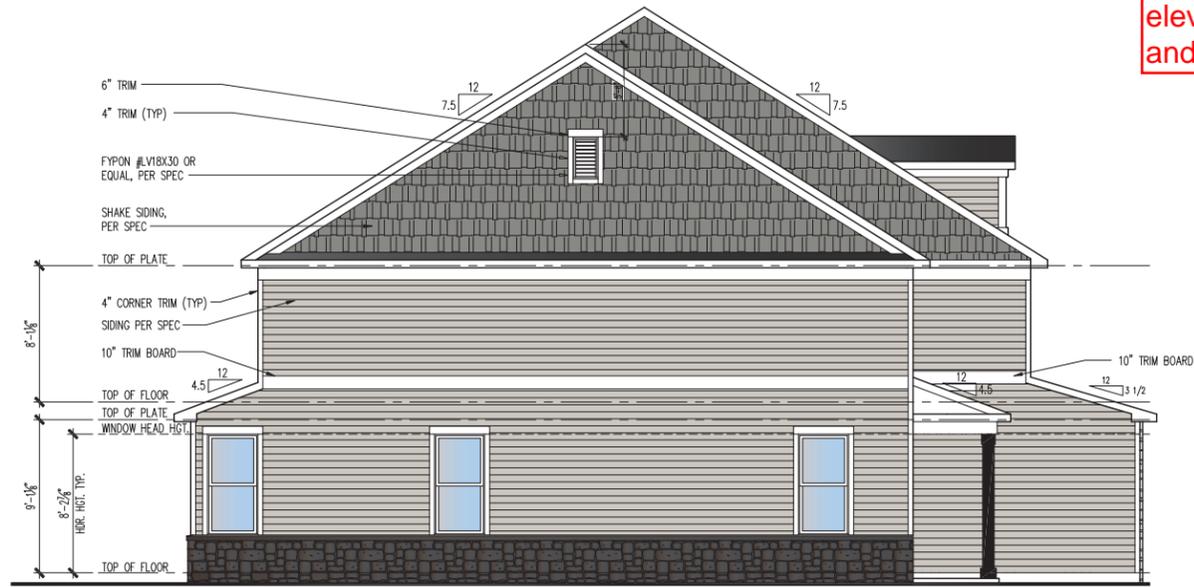
CITY PROJECT NO.  
 --  
**BROOKLYN PARK, MN**

**PRELIMINARY LANDSCAPE PLAN**  
 PEMBERLY  
 PULTE GROUP

FILE NO.  
 --  
**L4**  
**L4**

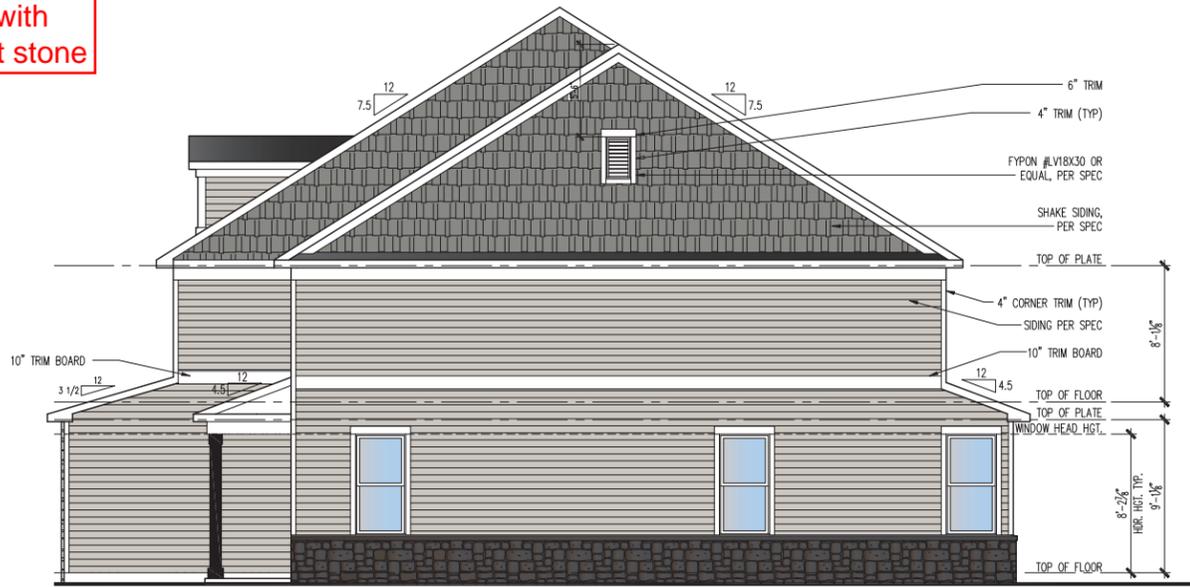


Color Palette #5  
example side  
elevations with  
and without stone



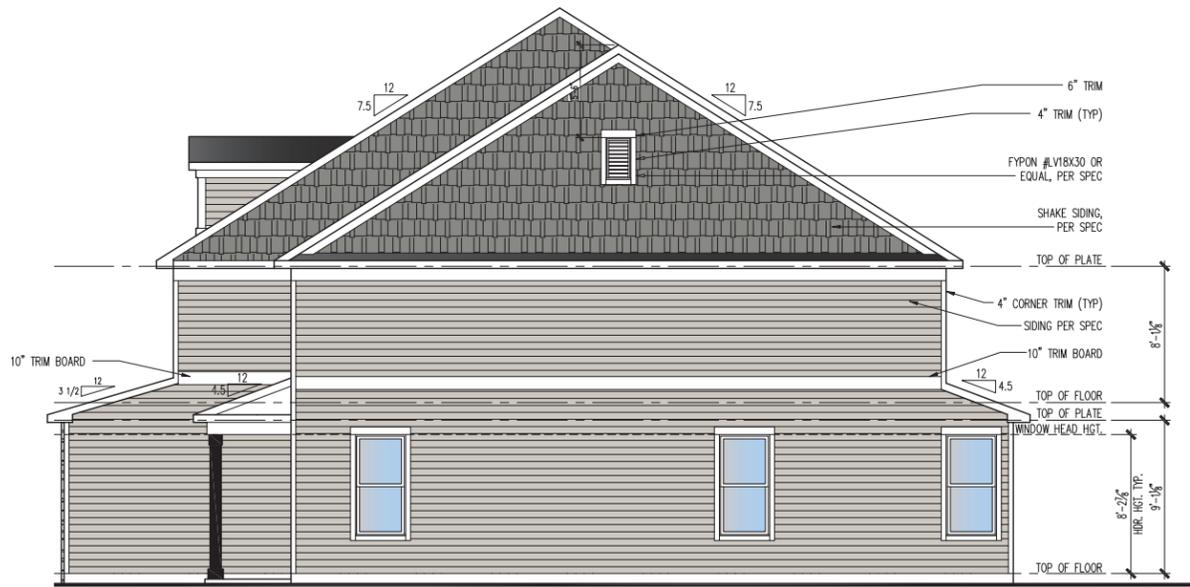
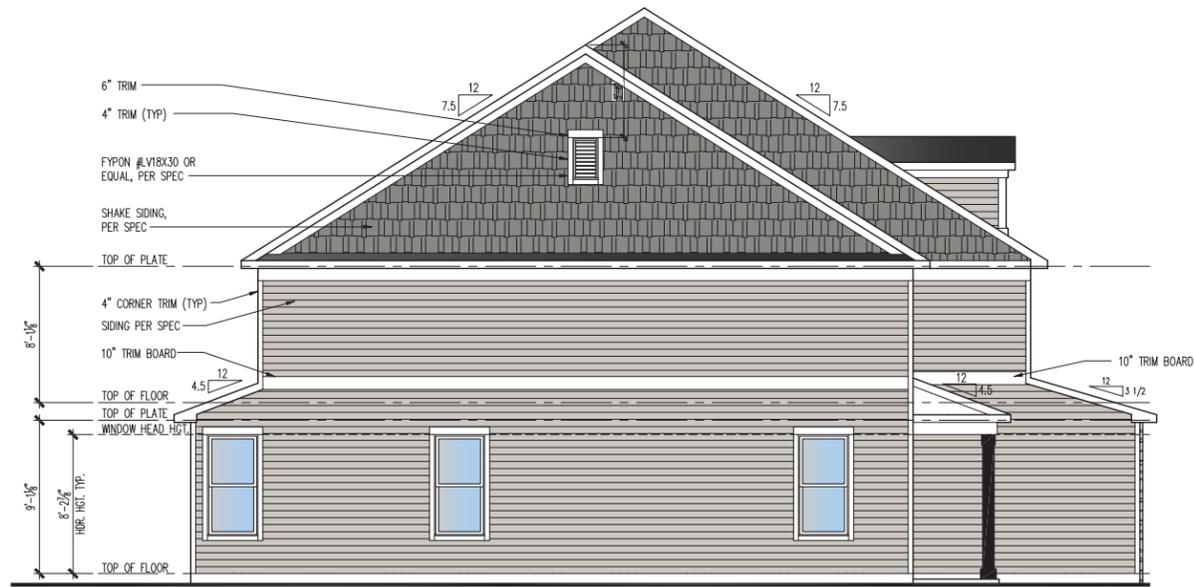
**LEFT ELEVATION**

SCALE: 3/16" = 1'-0"



**RIGHT ELEVATION**

SCALE: 3/16" = 1'-0"



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**Minnesota Division**  
7500 Office Ridge Circle, Suite 325  
Eden Prairie, Minnesota 55344



**Building Control Plan**  
Side Elevations  
Units 1-6

PRODUCTION MANAGER  
EM / ER  
INITIAL RELEASE DATE:  
04-29-2016  
CURRENT RELEASE DATE:  
04-29-2016

REV #	DATE	DESCRIPTION
△		
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GARAGE HANDING  
**Front Load**

PLAN NAME  
NPC PLAN NUMBER  
LAWSON PLAN ID

SHEET  
**CP-6**  
**EL-2**

PLOTTED: April 26, 2019 / Michael Utom / 24-FL-MN-BASE-BLDG3.DWG

NOTE: SCALES NOTED ON DRAWINGS RELATE TO FULL SIZE PLOTS ON 22x34 SHEETS - 11x17 SHEETS REPRESENT 1/2 SCALE PLOTS













Front elevation for  
 5-unit building



**FRONT ELEVATION**  
 SCALE: 3/16" = 1'-0"

Building Control Plan  
 Front Elevation  
 Units 1-5

PRODUCTION MANAGER  
 EM / ER  
 INITIAL RELEASE DATE:  
 04-29-2016  
 CURRENT RELEASE DATE:  
 04-29-2016

REV #	DATE	DESCRIPTION
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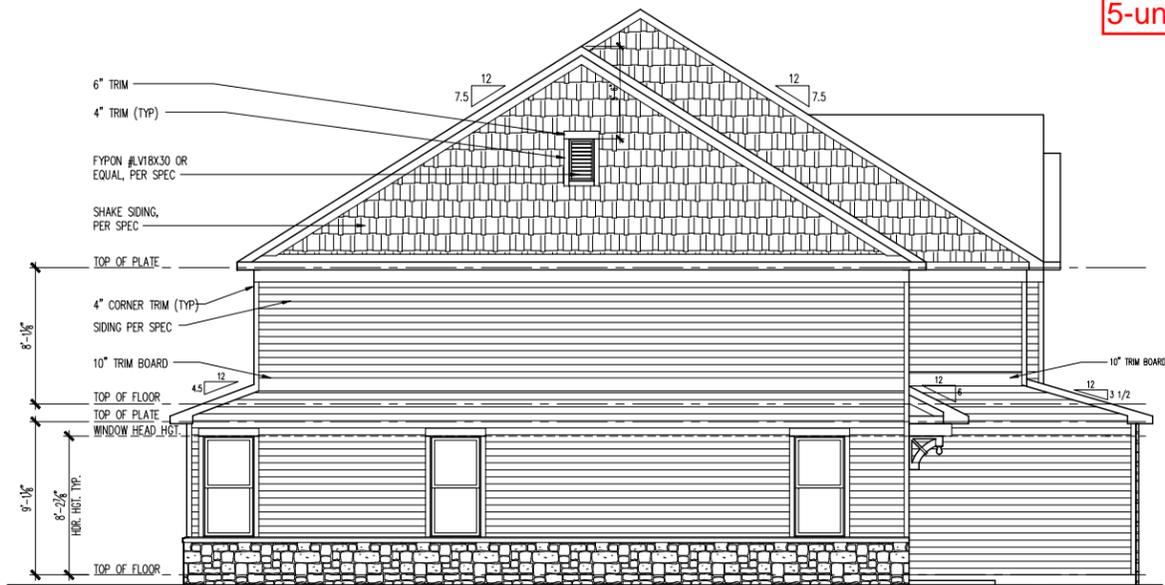
GARAGE HANDING  
**Front Load**

PLAN NAME  
 NPC PLAN NUMBER  
 LAWSON PLAN ID

SHEET  
**CP-5**  
**EL.1**

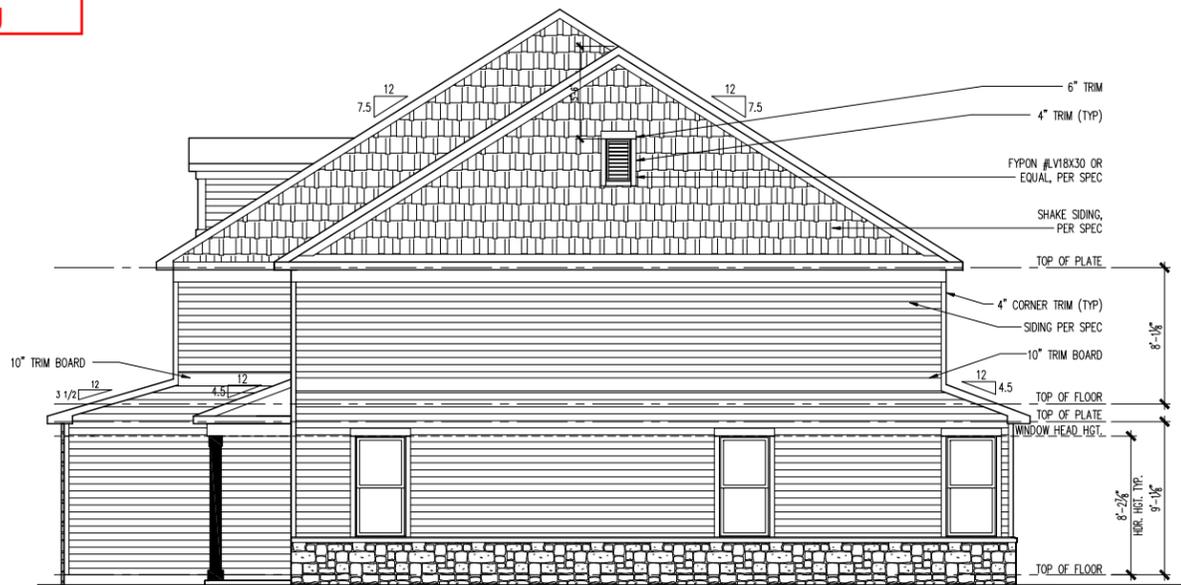
NOTE: SCALES NOTED ON DRAWINGS RELATE TO FULL SIZE PLOTS ON 22x34 SHEETS - 11x17 SHEETS REPRESENT 1/2 SCALE PLOTS

Side elevation for  
5-unit building



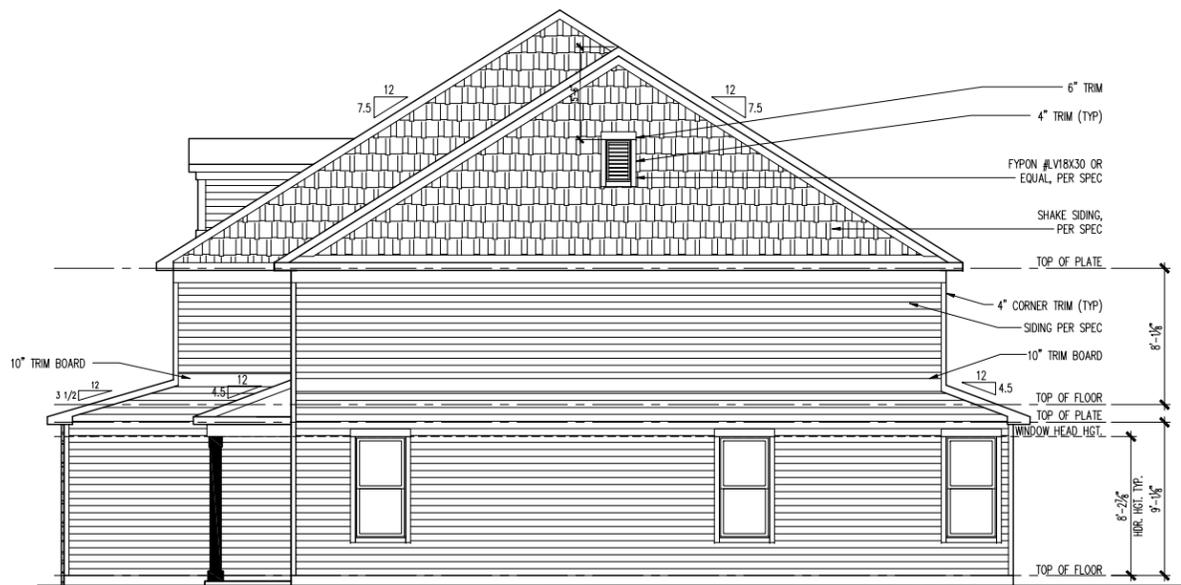
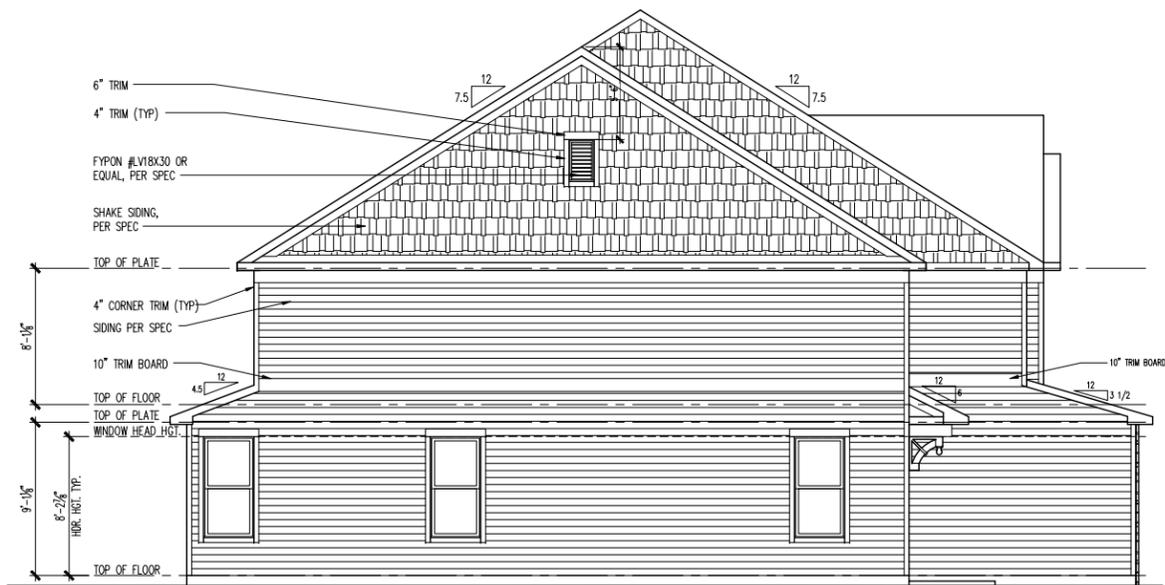
**LEFT ELEVATION**

SCALE: 3/16" = 1'-0"



**RIGHT ELEVATION**

SCALE: 3/16" = 1'-0"



REV #	DATE	DESCRIPTION
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GARAGE HANDING  
**Front Load**

PLAN NAME  
NPC PLAN NUMBER  
LAWSON PLAN ID

SHEET  
**CP-5**  
**EL-2**

Rear elevation for  
5-unit building



**REAR ELEVATION**  
SCALE: 3/16" = 1'-0"

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7500 Office Ridge Circle, Suite 325  
Eden Prairie, Minnesota 55344



**Building Control Plan**  
Rear Elevation  
Units 1-5

PRODUCTION MANAGER  
EM / ER  
INITIAL RELEASE DATE:  
04-29-2016  
CURRENT RELEASE DATE:  
04-29-2016

REV #	DATE / DESCRIPTION
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GARAGE HANDING  
**Front Load**

PLAN NAME  
NPC PLAN NUMBER  
LAWSON PLAN ID

SHEET  
**CP-5**  
**EL.3**

PLOTTED: April 26, 2019 / Michael Utom / 24-FL-WN-BASE-BLDG2.DWG

NOTE: SCALES NOTED ON DRAWINGS RELATE TO FULL SIZE PLOTS ON 22x34 SHEETS - 11x17 SHEETS REPRESENT 1/2 SCALE PLOTS



Front elevation for  
6-unit building



- SHINGLES, PER SPEC
- SMOOTH PANEL, PER SPEC
- 6" TRIM (TYP)
- SHAKE SIDING, PER SPEC
- TOP OF PLATE
- WINDOW HEAD HGT
- 10" FRIEZE (TYP)
- 4" TRIM (TYP)
- 4" CORNER TRIM (TYP)
- TOP OF FLOOR
- TOP OF PLATE
- 8" COLUMN, PER SPEC
- SIDING PER SPEC
- 8" TRIM, PER SPEC
- STONE PER SPEC
- TOP OF FLOOR

**FRONT ELEVATION**

SCALE: 3/16" = 1'-0"

PLOTTED: April 26, 2019 / Michael Utom / 24-FL-WN-BASE-BLDG3.DWG

NOTE: SCALES NOTED ON DRAWINGS RELATE TO FULL SIZE PLOTS ON 22x34 SHEETS - 11x17 SHEETS REPRESENT 1/2 SCALE PLOTS

**Minnesota Division**  
7500 Office Ridge Circle, Suite 325  
Eden Prairie, Minnesota 55344



**Building Control Plan**  
Front Elevation  
Units 1-6

PRODUCTION MANAGER  
EM / ER  
INITIAL RELEASE DATE:  
04-29-2016  
CURRENT RELEASE DATE:  
04-29-2016

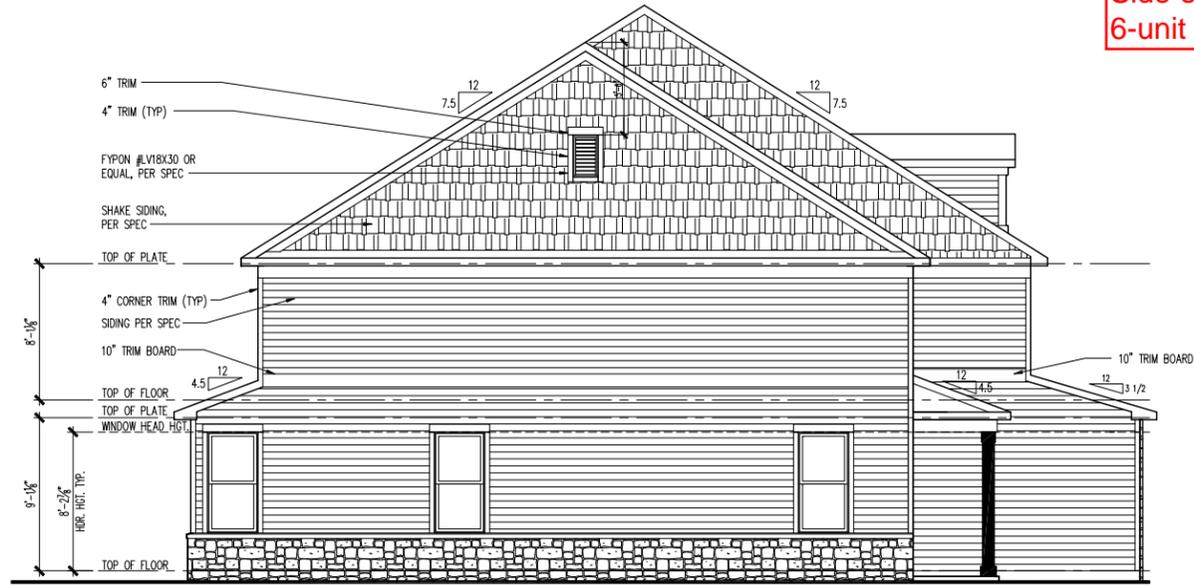
REV #	DATE / DESCRIPTION
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GARAGE HANDING  
**Front Load**

PLAN NAME  
NPC PLAN NUMBER  
LAWSON PLAN ID

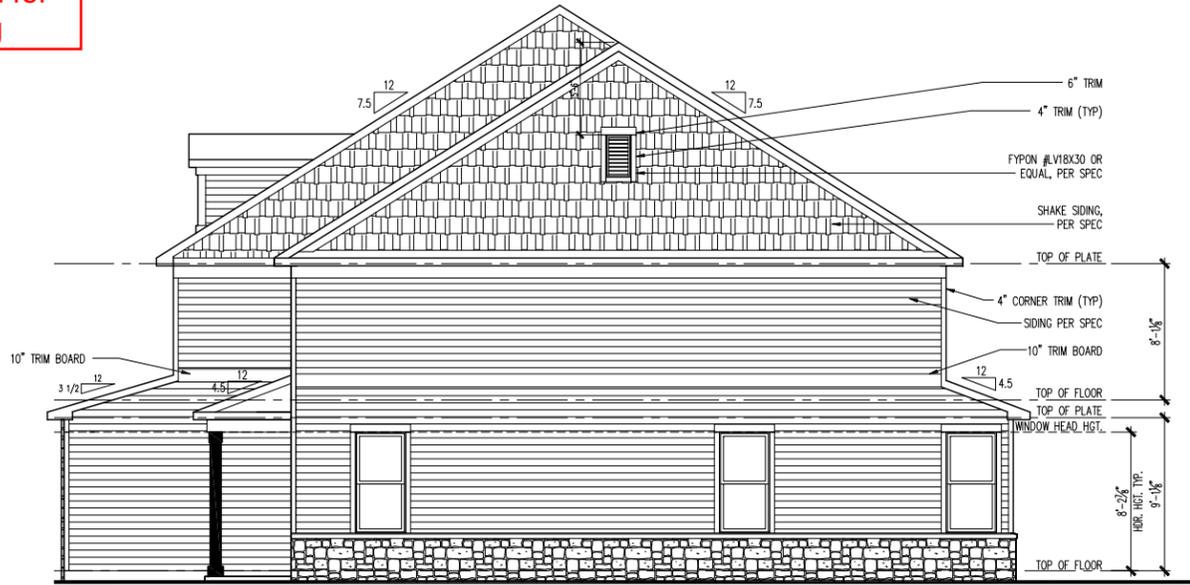
SHEET  
**CP-6**  
**EL.1**

Side elevation for  
6-unit building



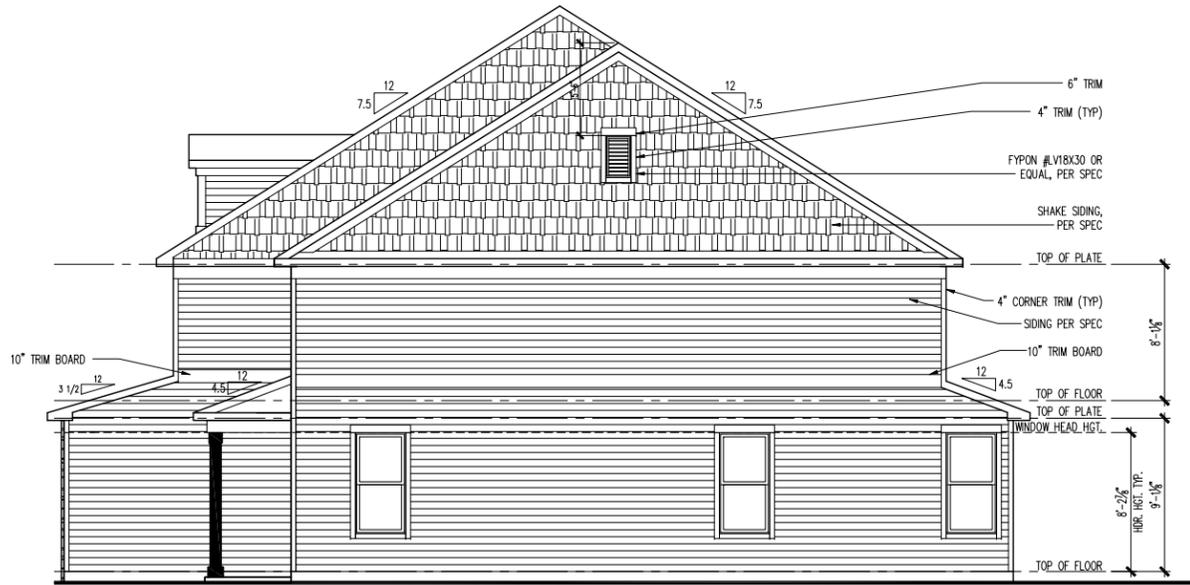
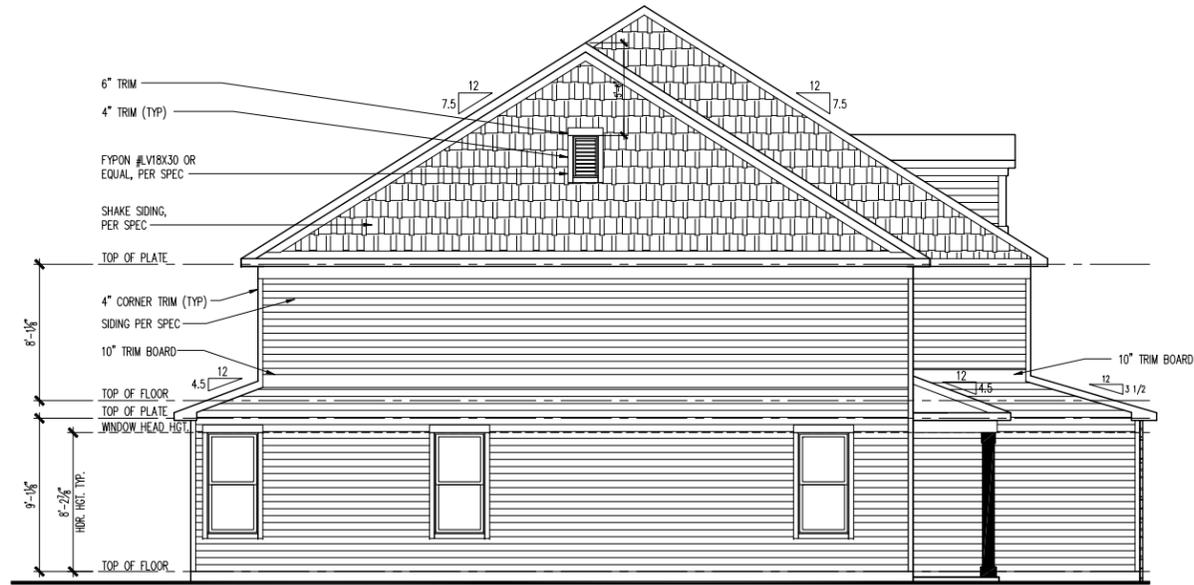
**LEFT ELEVATION**

SCALE: 3/16" = 1'-0"



**RIGHT ELEVATION**

SCALE: 3/16" = 1'-0"



REV #	DATE	DESCRIPTION
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Rear elevation for  
6-unit building



**REAR ELEVATION**  
SCALE: 3/16" = 1'-0"

Minnesota Division  
7500 Office Ridge Circle, Suite 325  
Eden Prairie, Minnesota 55344



Building Control Plan  
Rear Elevation  
Units 1-6

PRODUCTION MANAGER  
EM / ER  
INITIAL RELEASE DATE:  
04-29-2016  
CURRENT RELEASE DATE:  
04-29-2016

REV #	DATE / DESCRIPTION
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GARAGE HANDING  
**Front Load**

PLAN NAME  
NPC PLAN NUMBER  
LAWSON PLAN ID

SHEET  
**CP-6**  
**EL.3**

PLOTTED: April 26, 2019 / Michael Utom / 24-FL-WN-BASE-BLDG3.DWG

NOTE: SCALES NOTED ON DRAWINGS RELATE TO FULL SIZE PLOTS ON 22x34 SHEETS - 11x17 SHEETS REPRESENT 1/2 SCALE PLOTS  
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EXISTING UTILITIES SHOWN ARE SHOWN IN AN APPROXIMATE WAY ONLY. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ANY AND ALL EXISTING UTILITIES BEFORE COMMENCING WORK. HE AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES ARISING OUT OF HIS FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL EXISTING UTILITIES.

DRAWING NAME	NO.	BY	DATE	REVISIONS
BASE_SEED.DWG				
DRAWN BY				
CHECKED BY				
DATE				

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Name, P.E. \_\_\_\_\_  
Date: \_\_\_\_\_ Lic. No. \_\_\_\_\_

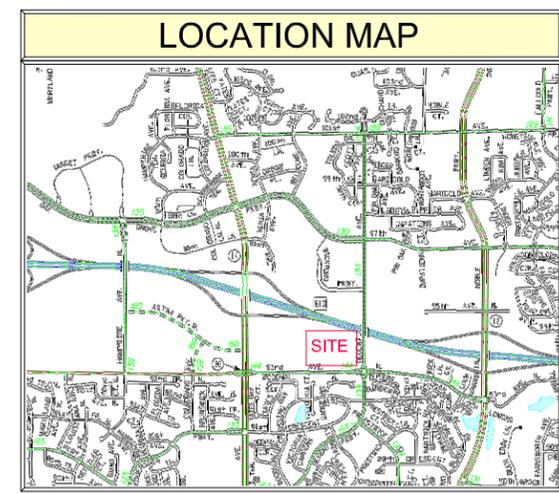
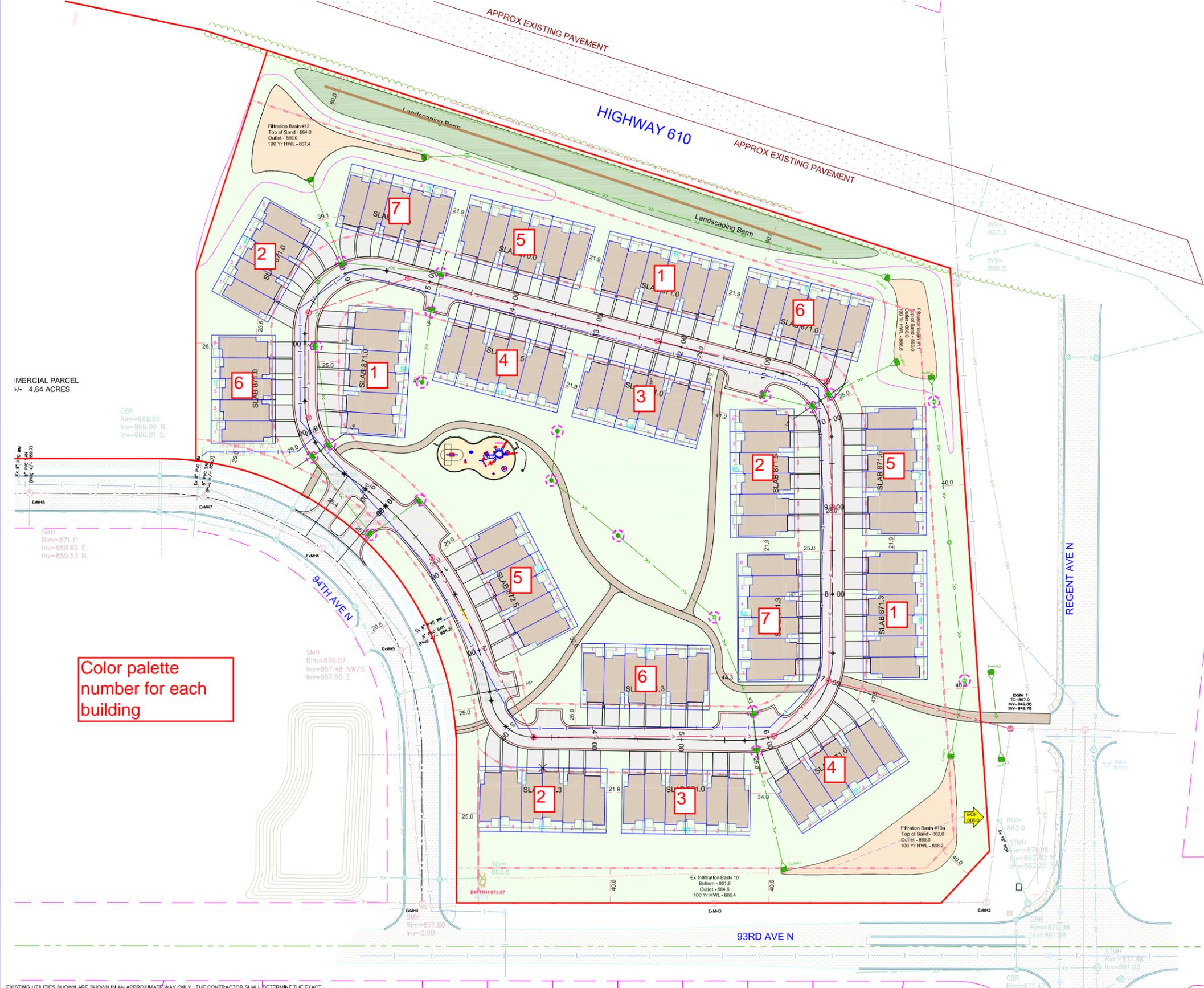
**SATHRE-BERGQUIST, INC.**  
150 SOUTH BROADWAY WAYZATA, MN. 55391 (952) 476-6000

ENGINEERS SURVEYORS  
DESIGNERS PLANNERS

CITY PROJECT NO. ---  
BROOKLYN PARK, MINNESOTA

CONCEPT PLAN 1ACCESS - 105 TH UNITS 031919  
**OUTLOT B - ASTRA VILLAGE 4TH**  
PULTE GROUP

FILE NO. 72905-439
X
X



**SHEET INDEX TABLE**

SHEET	Description
SP	Preliminary Site Plan
ALTA	ALTA
PP	Preliminary Plat
UP	Preliminary Utility Plan
GP	Preliminary Grading Plan
EC	Preliminary Erosion Control Plan

**PREPARED BY**

ENGINEER  
**SATHRE-BERGQUIST, INC.**  
 150 SOUTH BROADWAY  
 WAYZATA, MINNESOTA 55391  
 PHONE: (952) 476-8000  
 FAX: (952) 476-0104  
 CONTACT: ROBERT S. MOLSTAD, P.E.  
 EMAIL: MOLSTAD@SATHRE.COM

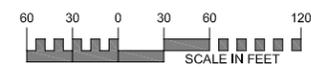
**PREPARED FOR**

DEVELOPER  
**PULTE HOMES OF MINNESOTA**  
 7500 FLYING CLOUD DRIVE  
 SUITE 670  
 EDEN PRAIRIE, MN 55344  
 CONTACT:  
 CHAD ONGSARD  
 PHONE: (952) 229-0723  
 EMAIL: CHAD.ONGSARD@PULTEGROUP.COM

**DESIGN DATA**

28' B-B PRIVATE STREET

**SETBACKS**  
 Flyab - 25 ft (to back of curb)  
 Ryab - 60 ft (to Hwy 610 ROW)  
 Ryab - 40 ft (Regent Ave N. & 93rd Ave N. ROW)  
 Blading to Blading Separation - 20 ft



EXISTING UTILITIES SHOWN ARE SHOWN IN AN APPROXIMATE WAY ONLY. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ANY AND ALL EXISTING UTILITIES BEFORE COMMENCING WORK. HE AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES ARISING OUT OF HIS FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL EXISTING UTILITIES.

DRAWING NAME	NO.	BY	DATE	REVISIONS
SHEETS -SP				
DRAWN BY				
CHECKED BY				
DATE				
05/31/19				

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I HEREBY CERTIFY THAT THIS PLAN OR SPECIFICATION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

*Robert S. Molstad*  
 ROBERT S. MOLSTAD, P.E.  
 Date: 05/31/19 Lic. No. 26428

**SATHRE-BERGQUIST, INC.**  
 150 SOUTH BROADWAY WAYZATA, MN. 55391 (952) 476-6000

CITY PROJECT NO.  
 ---  
 BROOKLYN PARK,  
 MINNESOTA

**PRELIMINARY SITE PLAN**  
**PEMBERLY**  
**PULTE HOMES OF MINNESOTA, LLC**

FILE NO.  
 72905-439  
 SP  
 SP



## Use of Stone & Photo

### 5-unit buildings (total 3)

1,231 sq ft of front facing front elevation façade (excluding windows, doors, garage doors, and roof)  
238 sq ft of stone as shown (full single story around and above garage door) on each unit  
19% stone coverage on front elevations of 5-unit buildings as drawn  
146 sq ft of stone as shown on side elevation wainscot only (one side only)  
31% stone coverage when including one side of stone wainscoting (146 + 238 /1231)  
43% stone coverage when including both sides of stone wainscoting (146 + 146+238 /1231)

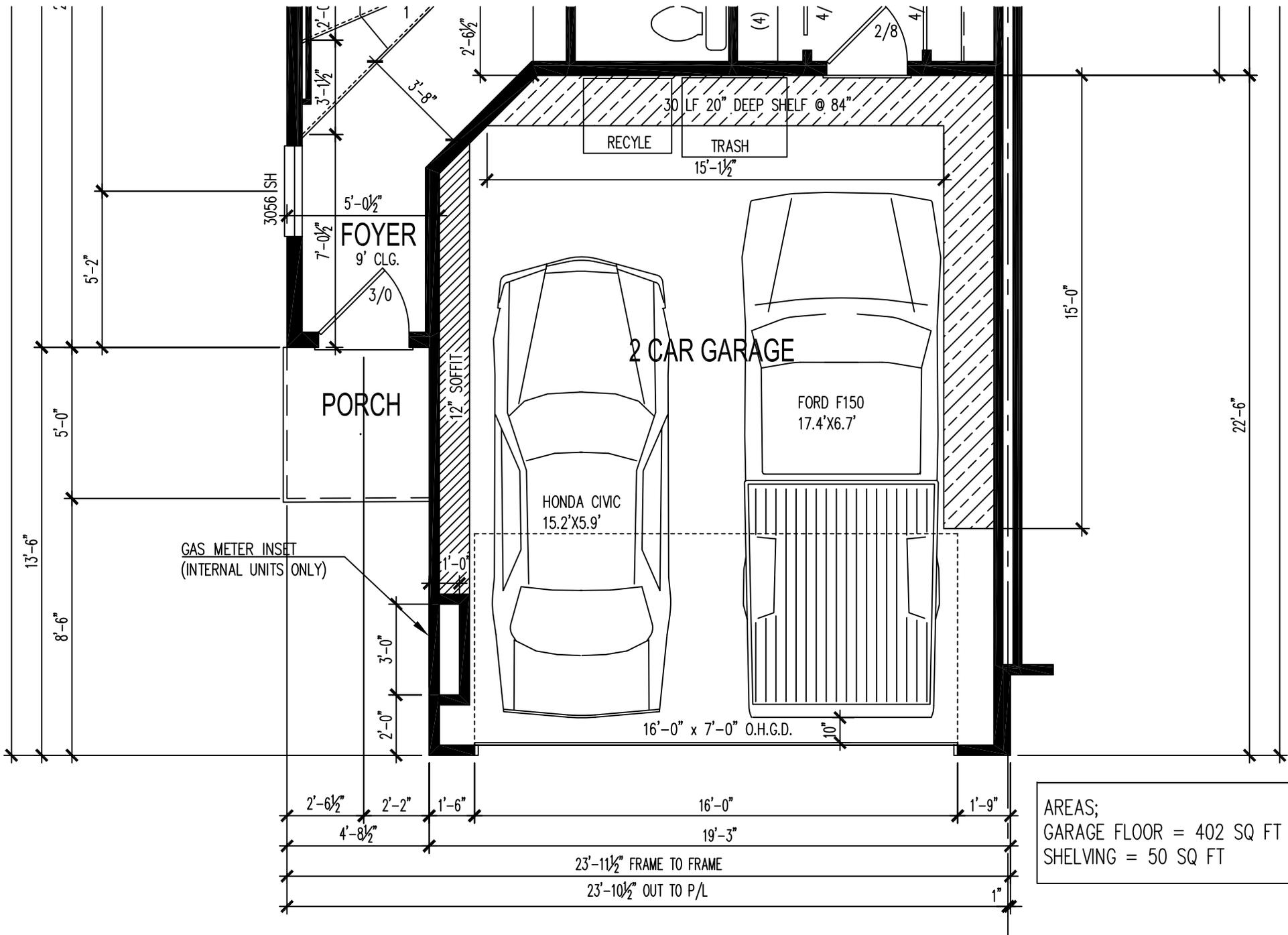
### 6-unit buildings (total 15)

1,431 sq ft of front facing front elevation façade (excluding windows, doors, garage doors, and roof)  
285 sq ft of stone as shown (full single story around and above garage door) on each unit  
20% stone coverage on front elevations of 6-unit buildings as drawn  
146 sq ft of stone as shown on side elevation wainscot only (one side only)  
30% stone coverage when including one side of stone wainscoting (146 + 285 /1431)  
40% stone coverage when including both sides of stone wainscoting (146 + 146 + 285 /1431)

### Total for neighborhood

18 buildings, (3) 5 unit, (15) 6 unit  
25,158 sq ft total front facing façade (1431 x 15 + 1231 x 3)  
4,989 sq ft total stone – fronts only (285 x 15 + 238 x 3)  
**Front elevation stone coverage = 19.8%**  
**13 high visibility side elevations = 7.5%** (146 x 13 = 1898 sq ft/25,158)  
**Total stone coverage = 27.3%**





13'-6"

8'-6"

5'-0"

5'-2"

2'-6 1/2"

4'-8 1/2"

3'-0"

2'-0"

1'-6"

16'-0"

19'-3"

23'-11 1/2" FRAME TO FRAME

23'-10 1/2" OUT TO P/L

1'-9"

1"

15'-0"

22'-6"

2'-6 1/2"

3'-8"

5'-0 1/2"

7'-0 1/2"

3/0

12" SOFFIT

1'-6"

RECYCLE

TRASH

15'-1 1/2"

16'-0" x 7'-0" O.H.G.D.

FORD F150  
17.4' X 6.7'

HONDA CIVIC  
15.2' X 5.9'

FOYER  
9' CLG.

3056 ISH

2 CAR GARAGE

30 LF 20" DEEP SHELF @ 84"

RECYCLE

TRASH

15'-1 1/2"

FORD F150  
17.4' X 6.7'

HONDA CIVIC  
15.2' X 5.9'

FOYER  
9' CLG.

PORCH

AREAS;  
GARAGE FLOOR = 402 SQ FT  
SHELVING = 50 SQ FT



**Upgraded Garage Door**

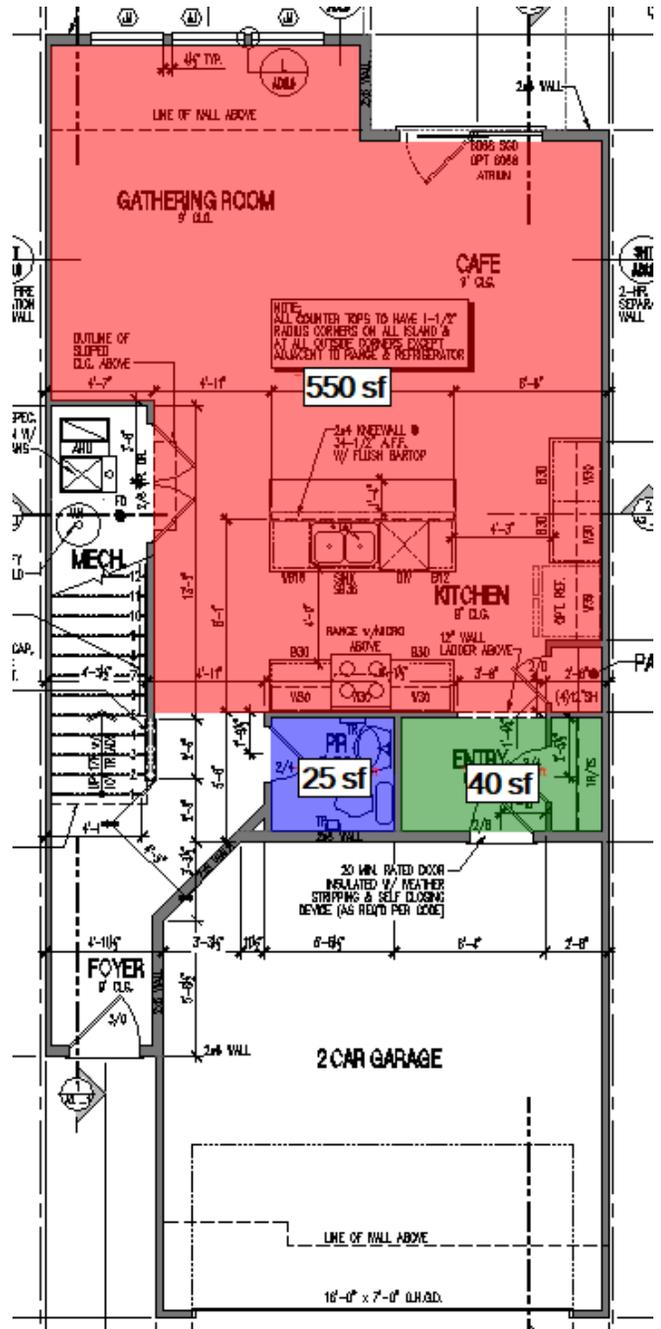
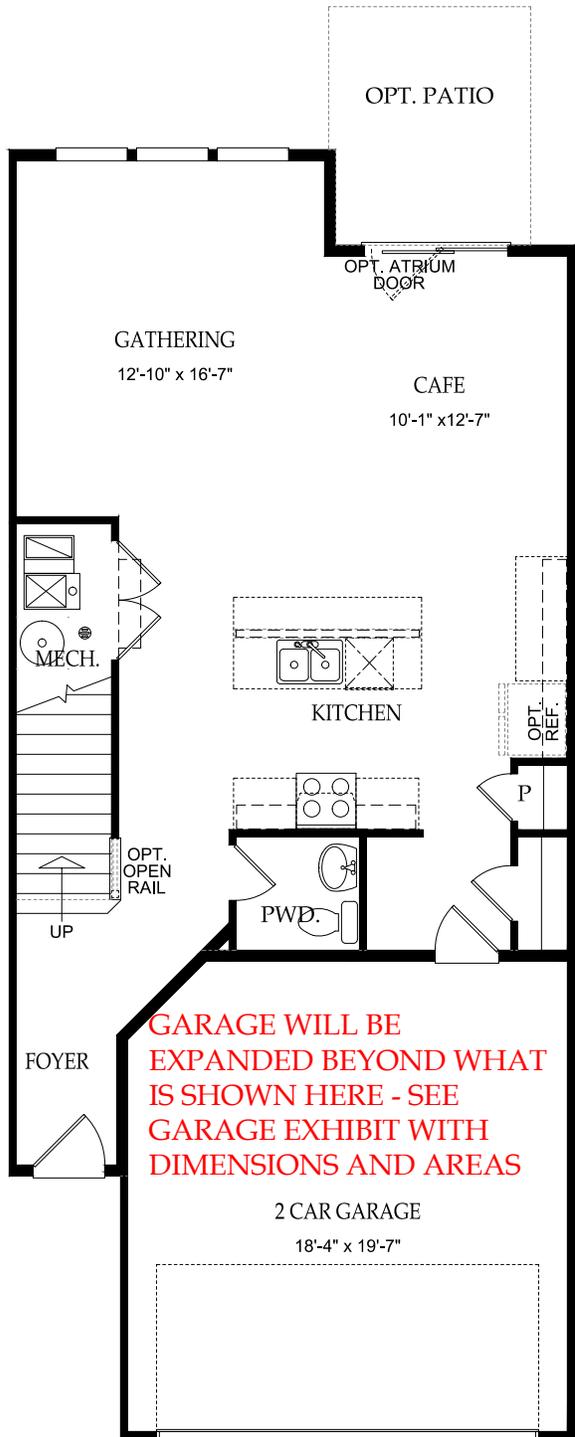


Ashton  
Midwest  
Zones 2x6

SCHEDULE of AREAS	
<b>BASE HOUSE - CONDITIONED AREA</b>	
FIRST FLOOR	815
SECOND FLOOR	1070
HABITABLE ATTIC	506
AREA ABOVE GRADE PLANE	2391
BASEMENT (OPTIONAL, SEE BELOW)	0
TOTAL CONDITIONED (BASE)	2391
<b>BASE HOUSE - UNCONDITIONED AREA</b>	
GARAGE - 2 CAR FRONT ENTRY	372
TOTAL UNCONDITIONED (BASE)	372
<b>TOTAL FLOOR AREA (BASE)</b>	
	2763
<b>OPT. CONDITIONED AREAS (Additional)</b>	
FIRST FLOOR	
SUNROOM	100
SECOND FLOOR	
SITTING	100
BASEMENT - UNFINISHED	
BASEMENT (OVERALL)	815
SUNROOM	100
BASEMENT - FINISHED	
OVERALL FINISHED (Within Bsmnt. Overall Area)	675
SUNROOM (ADDITIONAL)	94
<b>OPT. UNCONDITIONED AREAS (Additional)</b>	
GARAGE	
-	0
EXTENSIONS	
-	0
STORAGE	
-	0
OUTDOOR LIVING AREA	
DECK	83
DECK 2	120
3-SEASON ROOM	84
-	0



EQUAL HOUSING  
OPPORTUNITY



815 sf

# First Floor - Slab on Grade Condition

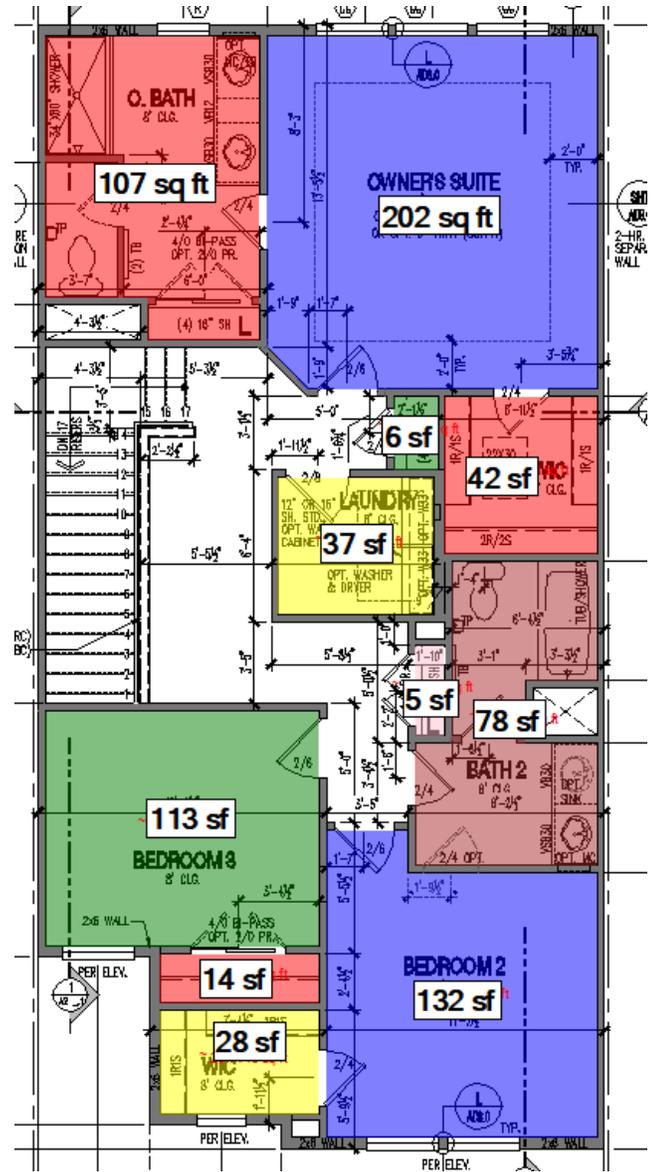
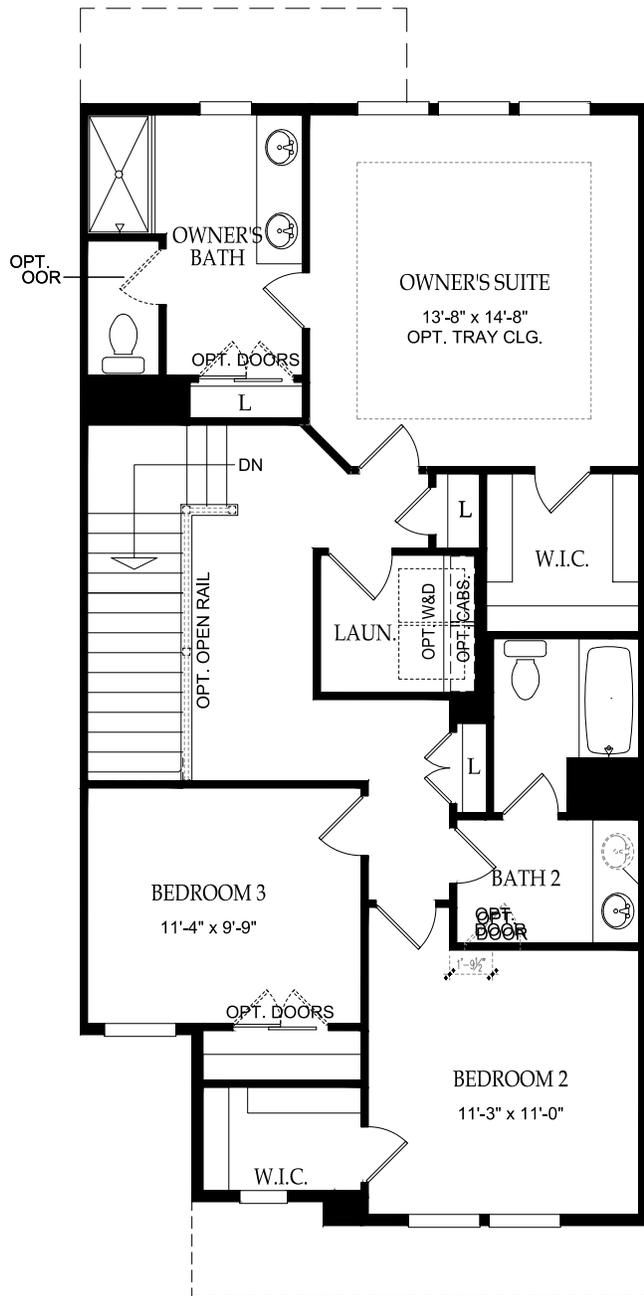
9'-0" Ceiling

Floor plans, Elevations and Options will vary from Community to Community and may not reflect current changes. Dimensions shown are approximate.

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2467.902-NZ-BASE-BROC-2x6.dwg - FL1\_SOG





1070 sf

## Second Floor

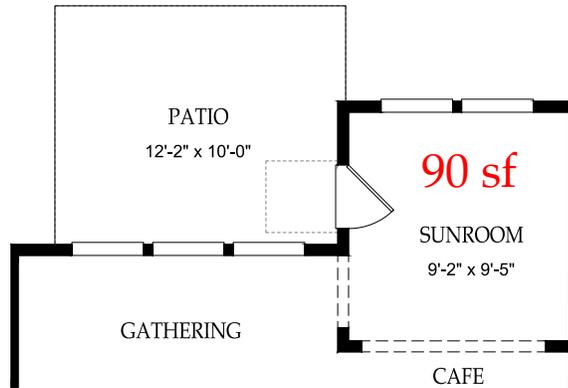
9'-0" Ceiling

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2467.902-NZ-BASE-BROC-2x6.dwg - FL2





Opt. Patio With  
Opt. Sunroom / Opt. 2-Story Extension

## First Floor Options - Slab on Grade Condition

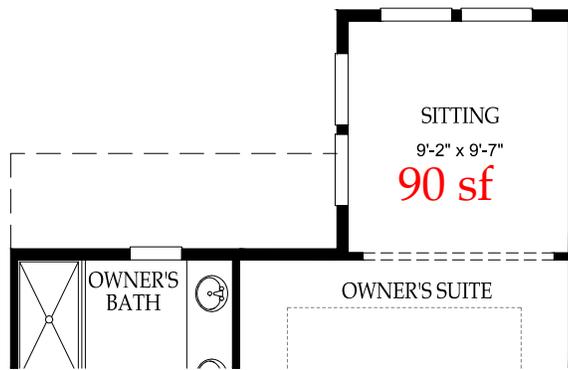
9'-0" Ceiling

*Floor plans, Elevations and Options will vary from Community to Community and may not reflect current changes. Dimensions shown are approximate.*

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2467.902-NZ-BASE-BROC-2x6.dwg - OP11\_SOG





Opt. 2-Story Extension - Sitting Room

p

## Second Floor Options

9'-0" Ceiling

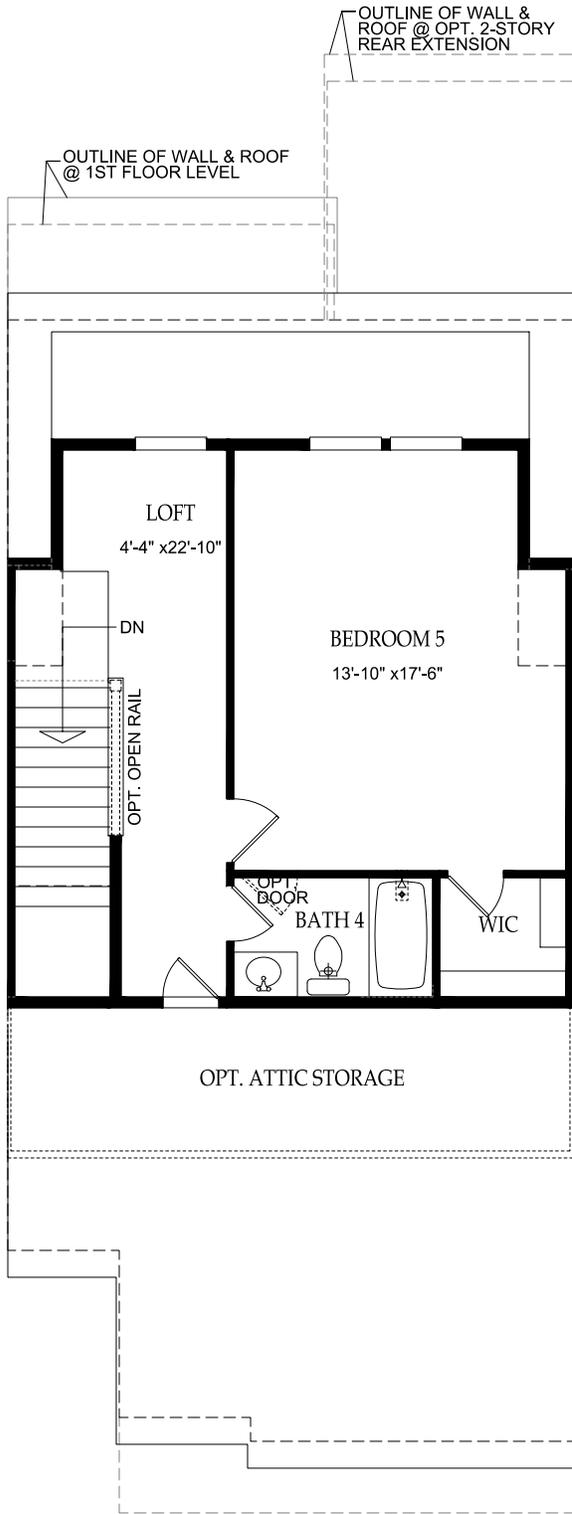
*Floor plans, Elevations and Options will vary from Community to Community and may not reflect current changes. Dimensions shown are approximate.*

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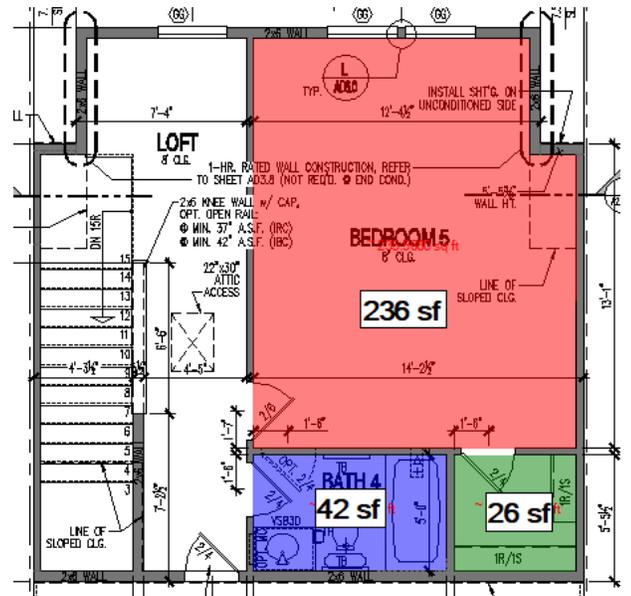
2467.902-NZ-BASE-BROC-2x6.dwg - OP22







Opt. Bedroom 5 & Bath 4



# Habitable Attic Options

8'-0" Ceiling

Floor plans, Elevations and Options will vary from Community to Community and may not reflect current changes. Dimensions shown are approximate.

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2467.902-NZ-BASE-BROC-2x6.dwg - OPHA12



# City of Brooklyn Park Request for Council Action

<b>Agenda Item:</b>	7.1	<b>Meeting Date:</b>	July 22, 2019
<b>Agenda Section:</b>	General Action Items	<b>Originating Department:</b>	Finance
<b>Resolution:</b>	X		
<b>Ordinance:</b>	N/A	<b>Prepared By:</b>	LaTonia Green, Finance Director
<b>Attachments:</b>	9	<b>Presented By:</b>	LaTonia Green
<b>Item:</b>	Amorce I Limited Partnership Conduit Bond Issuance (Housing Revenue Bond)		

## City Manager's Proposed Action:

MOTION \_\_\_\_\_, SECOND \_\_\_\_\_, TO WAIVE THE READING AND ADOPT RESOLUTION #2019-\_\_\_\_\_ AUTHORIZING THE ISSUANCE, SALE, AND DELIVERY OF ITS MULTIFAMILY HOUSING REVENUE OBLIGATIONS RELATING TO THE AMORCE I LIMITED PARTNERSHIP PROJECT; APPROVING THE FORMS OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE OBLIGATIONS AND RELATED DOCUMENTS; PROVIDING FOR THE SECURITY, RIGHTS, AND REMEDIES WITH RESPECT TO THE OBLIGATIONS; AND GRANTING APPROVAL FOR CERTAIN OTHER ACTIONS WITH RESPECT THERETO.

## Overview:

Amorce I Limited Partnership has requested the City of Brooklyn Park issue revenue obligations, in one or more series, pursuant to Minnesota Statutes, Chapters 426C and 462A and lend the proceeds thereof to the Borrower to refund the City's outstanding Multifamily Housing Revenue Note (Amorce I Limited Partnership Project), Series 2017 (the "Series 2017 Note"), issued on May 9, 2017 in the original aggregate principal amount of \$15,000,000 to finance the acquisition and rehabilitation of 170 units of multifamily rental apartments, and facilities functionally related and subordinate thereto, commonly known as Brooks Landing Apartments and Brook Gardens Apartments and Townhomes, located at 5825 74<sup>th</sup> Avenue North and 5550 69<sup>th</sup> Avenue North respectively.

The Borrower has requested that the City issue, sell, and deliver revenue obligations in an original aggregate principal amount not to exceed \$15,000,000, (i) a portion of the principal amount of which would be issued pursuant to a Trust Indenture, dated on or after August 1, 2019 (the "Indenture"), between the City and the U.S. Bank National Association (the "Trustee") as the Multifamily Housing Revenue Refunding Bonds (Amorce I Limited Partnership Project), Series 2019A (the "Series A Bonds") to be purchased by Dougherty & Company LLC (the "Underwriter"); and (ii) a portion of the principal amount of which would be issued as a Multifamily Housing Revenue Note, Series 2019B (the "Series B Note" and, together with the Series A Bonds, the "Obligations") to be purchased by Bridgewater Investment Management, Inc. (or another financial institution selected by the Borrower, the "Lender") in accordance with the terms of a Loan Purchase Agreement, dated on or after August 1, 2019, by and between the Borrower and the Lender (the "Loan Purchase Agreement"); and

The proceeds derived from the sale of the Series A Bonds will be loaned by the City to the Borrower (the "Series A Loan") pursuant to the terms of a Loan Agreement, dated on or after August 1, 2019, by and between the Borrower and the City (the "Series A Loan Agreement"), and the proceeds derived from the sale of the Series B Note will be loaned by the City to the Borrower (the "Series B Loan") pursuant to the terms of a Loan Agreement, dated on or after August 1, 2019, by and between the Borrower and the City (the "Series B Loan Agreement" and, together with the Series A Loan Agreement, the "Loan Agreements"); and

The Obligations will be issued pursuant to this resolution and the Obligations and the interest on the Obligations: (i) shall be payable solely from the revenues pledged therefor under the Loan Agreements and the Indenture;

(ii) shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation; (iii) shall not constitute nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers; (iv) shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the City other than the City's interest in the Loan Agreements; and (v) shall not constitute a general or moral obligation of the City.

The City's Conduit Debt policy provides for a fee equal to the sum of the following: (i) an amount equal to one-half percent (0.50%) of the principal amount of the Obligations, payable on the date of issuance of the Obligations; and (ii) on each anniversary of the date of issuance of the Obligations, an amount equal to one-tenth percent (0.10%) of the average amount of the outstanding principal amount of the Obligations during the previous twelve months.

The City's Bond Counsel confirms that this issuance will not impact the City's debt capacity, that the Note does not constitute a general or moral obligation of the City and will not be secured by the taxing powers of the City or any assets or property of the City. Further, the actions requested from the City Council will not adversely impact the City's ability to issue bank qualified obligations for City projects.

Lori Boisclair or another representative of Amorice I Limited Partnership will be available to answer any questions that may arise with respect to multifamily facilities to be financed with the Bonds. John Utley of Kennedy & Graven, Chartered (Bond Counsel) will be available to answer questions that may arise with respect to the bond financing generally.

**Primary Issues/Alternatives to Consider:** N/A

**Budgetary/Fiscal Issues:**

The City's Conduit Debt policy provides for a fee of 0.10% of the average amount of the outstanding principal amount of the Note during the previous twelve months.

**Attachments:**

7.1A RESOLUTION

*(Attachments 7.1B through 7.1I are available in the electronic packet only)*

7.1B INDENTURE

7.1C BP AMORCE I 2019A LOAN AGREEMENT

7.1D BP AMORCE I 2019B FORM OF NOTE

7.1E BP AMORCE I 2019B LOAN AGREEMENT

7.1F BP AMORCE I 2019B ASSIGNMENT OF LOAN AGREEMENT

7.1G BP AMORCE I 2019 REGULATORY AGREEMENT (BROOKS LANDING)

7.1H BP AMORCE I 2019 REGULATORY AGREEMENT (BROOKS GARDENS)

7.1I BP AMORCE I 2019A UCC-1

RESOLUTION #2019-

RESOLUTION AUTHORIZING THE ISSUANCE, SALE, AND DELIVERY OF ITS MULTIFAMILY HOUSING REVENUE OBLIGATIONS RELATING TO THE AMORCE I LIMITED PARTNERSHIP PROJECT; APPROVING THE FORMS OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE OBLIGATIONS AND RELATED DOCUMENTS; PROVIDING FOR THE SECURITY, RIGHTS, AND REMEDIES WITH RESPECT TO THE OBLIGATIONS; AND GRANTING APPROVAL FOR CERTAIN OTHER ACTIONS WITH RESPECT THERETO

WHEREAS, the City of Brooklyn Park, Minnesota (the "City" or "Issuer"), is a home rule charter city duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota; and

WHEREAS, pursuant to Minnesota Statutes, Chapters 462C and 462A, as amended (the "Act"), the City is authorized to carry out the public purposes described in the Act by issuing revenue bonds and notes or other obligations to finance or refinance multifamily housing developments located within the City, and as a condition to the issuance of such revenue obligations, adopt a housing program providing the information required by Section 462C.03, subdivision 1a, of the Act; and

WHEREAS, Amorce I Limited Partnership, a Minnesota limited partnership (the "Borrower"), has requested that the City issue its revenue obligations, in one or more series, under the Act and lend the proceeds thereof to the Borrower to refund the Issuer's outstanding Multifamily Housing Revenue Note (Amorce I Limited Partnership Project), Series 2017 (the "Prior Note"), issued on May 9, 2017 in the original aggregate principal amount of \$15,000,000 to finance the acquisition and rehabilitation of 170 units of multifamily rental apartments, and facilities functionally related and subordinate thereto, commonly known as Brooks Landing Apartments ("Brooks Landing") and Brook Gardens Apartments and Townhomes ("Brook Gardens"), located at 5825 74th Avenue North and 5550 69th Avenue North, respectively, in the City (the "Project"); and

WHEREAS, on December 12, 2016, the City Council adopted a preliminary resolution (the "Preliminary Resolution") which constitutes a reimbursement resolution and an official intent of the City to reimburse expenditures with respect to the Project from the proceeds of tax-exempt revenue bonds in accordance with the provisions of Treasury Regulations, Section 1.150-2; and

WHEREAS, the Issuer received Certificate of Allocation No. 294, dated January 10, 2017, from Minnesota Management and Budget allocating volume cap bonding authority to the City in the amount of \$15,000,000 for the issuance of the Prior Note; and

WHEREAS, the City Council has adopted a housing program providing the information required by Section 462C.03, subdivision 1a of the Act (the "Housing Program") regarding the issuance by the City of one or more revenue obligations in the maximum principal amount of \$15,000,000 to finance the acquisition and rehabilitation of the Project which will be refinanced by refunding the Prior Note; and

WHEREAS, the Borrower has requested that the City issue, sell, and deliver its revenue obligations in an original aggregate principal amount not to exceed \$15,000,000, (i) a portion of the principal amount of which would be issued pursuant to a Trust Indenture, dated on or after August 1, 2019 (the "Indenture"), between the Issuer and the U.S. Bank National Association (the "Trustee") as the Multifamily Housing Revenue Refunding Bonds (Amorce I Limited Partnership Project), Series 2019A (the "Series A Bonds") to be purchased by Dougherty & Company LLC (the "Underwriter"); and (ii) a portion of the principal amount of which would be issued as a Multifamily Housing Revenue Note, Series 2019B (the "Series B Note" and, together with the Series A Bonds, the "Obligations") to be purchased by Bridgewater Investment Management, Inc. (or another financial institution selected by the Borrower, the "Lender") in accordance with the terms of a Loan Purchase Agreement, dated on or after August 1, 2019, by and between the Borrower and the Lender (the "Loan Purchase Agreement"); and

WHEREAS, the proceeds derived from the sale of the Series A Bonds will be loaned by the City to the Borrower (the "Series A Loan") pursuant to the terms of a Loan Agreement, dated on or after August 1, 2019, by and between the Borrower and the City (the "Series A Loan Agreement"), and the proceeds derived from the sale of the Series B Note will be loaned by the City to the Borrower (the "Series B Loan") pursuant to the terms of a Loan Agreement, dated on or after August 1, 2019, by and between the Borrower and the City (the "Series B Loan Agreement" and, together with the Series A Loan Agreement, the "Loan Agreements"); and

WHEREAS, the Obligations will be issued pursuant to this resolution and the Obligations and the interest on the Obligations: (i) shall be payable solely from the revenues pledged therefor under the Loan Agreements and the Indenture; (ii) shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation; (iii) shall not constitute nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers; (iv) shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the City other than the City's interest in the Loan Agreements; and (v) shall not constitute a general or moral obligation of the City;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BROOKLYN PARK, MINNESOTA, AS FOLLOWS:

1. Findings. The City acknowledges, finds, determines, and declares that the issuance of the Obligations is authorized by the Act and is consistent with the purposes of the Act and that the issuance of the Obligations, and the other actions of the City under the Indenture, the Loan Agreements, and this resolution constitute a public purpose and are in the interests of the City. The Project constitutes a "qualified residential rental project" within the meaning of Section 142(d) of the Code, and a "multifamily housing development" authorized by the Act, and furthers the purposes of the Act. In authorizing the issuance of the Obligations for the financing and refinancing of the Project and the related costs, the City's purpose is and the effect thereof will be to promote the public welfare of the City and its residents by providing or preserving affordable multifamily housing developments for low or moderate income residents of the City and otherwise furthering the purposes and policies of the Act.

2. Series A Bonds Structure. Pursuant to the Series A Loan Agreement the City will loan the proceeds of the Series A Bonds to the Borrower to refinance a portion of the Project. The payments to be made by the Borrower under the Series A Loan Agreement are fixed so as to produce revenue sufficient to pay the principal of, premium, if any, and interest on the Series A Bonds when due. When executed, the right, title and interest of the City in, to and under, among other things, the Series A Loan Agreement (except as therein provided) will be assigned to the Trustee pursuant to the Indenture. The Series A Bonds will be purchased by the Underwriter pursuant to the Bond Purchase Agreement, dated on or after the date this resolution is approved (the "Bond Purchase Agreement"), among the Underwriter, the City, and the Borrower. The Series A Bonds shall bear interest at the rates, shall be numbered, shall be dated, shall mature, shall be subject to redemption prior to maturity, and shall be in such form and have such other details and provisions as may be prescribed in the Indenture, as executed in accordance with Sections 8 and 16. The Trustee is hereby appointed as the Paying Agent and the Bond Registrar for the Series A Bonds.

3. Series B Note Structure. Pursuant to the Series B Loan Agreement, the City will loan the proceeds of the Series B Note to the Borrower to refinance a portion of the Project. The payments to be made by the Borrower under the Series B Loan Agreement are fixed so as to produce revenue sufficient to pay the principal of, premium, if any, and interest on the Series B Note when due. When executed, the right, title and interest of the City in, to and under, among other things, the Series B Loan Agreement (except as therein provided) will be assigned to the Lender pursuant to an Assignment of Loan Agreement, dated on or after August 1, 2019, between the City and the Lender (the "Loan Assignment Agreement"). The Series B Note will be further secured by certain security instruments required by the Lender and in forms authorized by the Borrower to be executed by or on behalf of the Borrower in favor of the Lender which may include: (i) assignments of capital contributions and contract rights; (ii) one or more security agreements and indemnity agreements; (iii) one or more guaranty agreements in favor of the Lender; (iv) a general partner pledge; and (v) other security documents that are intended to ensure timely payment of the Series B Loan and the Series B Note (collectively, the "Series B Security Documents"). The Series B Note shall bear interest at a variable rate. The Series B Note shall be in the principal

amount, shall be numbered, shall be dated, shall mature, shall be subject to redemption prior to maturity, and shall be in such form and have such other details and provisions as may be set forth therein, as executed in accordance with Sections 8 and 16.

4. Additional Provisions Relating to Series B Note.

(a) Registration of Transfer. The City will cause to be kept at the office of the City Finance Director a Note Register in which, subject to such reasonable regulations as it may prescribe, the City shall provide for the registration of transfers of ownership of the Series B Note. The Series B Note shall be initially registered in the name of the Lender and shall be transferable, subject to the provisions herein and in the Series B Note, upon the Note Register by the Lender in person or by its agent duly authorized in writing, upon surrender of the Series B Note together with a written instrument of transfer satisfactory to the City Finance Director, duly executed by the Lender or its duly authorized agent. The City may require, as a precondition to any transfer, that the transferee provide to the City an investor letter or certification in a form satisfactory to the City and other evidence satisfactory to the City that the transferee is a financial institution or other accredited investor under the securities laws. The following form of assignment shall be sufficient for said purpose.

For value received \_\_\_\_\_ hereby sells, assigns and transfers unto \_\_\_\_\_ the attached Note of the City of Brooklyn Park, Minnesota, and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer said Note on the books of said City with full power of substitution in the premises. The undersigned certifies that the transfer is made in accordance with the provisions of Section 5(d) of the Resolution authorizing the issuance of the Note.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Registered Owner

Upon such transfer the City Finance Director shall note the date of registration and the name and address of the new holder thereof in the Note Register, and in the registration blank appearing on the Series B Note.

(b) Mutilated, Lost or Destroyed Series B Note. In case a Series B Note issued hereunder shall become mutilated or be destroyed or lost, the City shall, if not then prohibited by law, cause to be executed and delivered, a new Series B Note, of like outstanding principal amount, number and tenor in exchange and substitution for and upon cancellation of such mutilated Series B Note, or in lieu of and in substitution for such Series B Note destroyed or lost, upon the Lender paying the reasonable expenses and charges of the City in connection therewith, and in the case of a Series B Note destroyed or lost, the filing with the City of evidence satisfactory to the City with indemnity satisfactory to it. If the mutilated, destroyed or lost Series B Note has already matured or been called for redemption in accordance with its terms it shall not be necessary to issue a new Series B Note, prior to payment.

(c) Ownership of Series B Note. The City may deem and treat the person in whose name the Series B Note is last registered in the Note Register and by notation on the Series B Note, whether or not such Series B Note shall be overdue, as the absolute owner of such Series B Note, for the purpose of receiving payment of or on account of the principal thereof, redemption price or interest and for all other purposes whatsoever, and the City shall not be affected by any notice to the contrary.

(d) Limitation on Series B Note Transfers. The Series B Note will be issued to either (i) a "qualified institutional buyer" as defined in Rule 144A promulgated under the 1933 Act, that purchases for its own account or for the account of a qualified institutional buyer, or (ii) an "accredited investor" as defined in Regulation D promulgated under the 1933 Act, that purchases for its own account and without registration under state or other securities laws, pursuant to an exemption for such issuance; and accordingly the Series B Note may not be assigned or transferred in whole or part, nor may a participation

interest in the Series B Note be given pursuant to any participation agreement, except to another “qualified institutional buyer” or “accredited investor” in accordance with an applicable exemption from such registration requirements and with full and accurate disclosure of all material facts to the prospective purchaser(s) or transferee(s) and the Series B Note shall remain in a single denomination equal to the entire outstanding principal balance thereof and in accordance with Section 4(a) hereof.

(e) Issuance of Replacement Series B Note. Subject to the provisions of Section 4(d), the City shall, at the request and expense of the Lender issue a new Series B Note, in aggregate outstanding principal amount equal to that of such Series B Note, and of like tenor except as to number, principal amount, and the amount of the periodic installments payable thereunder, and registered in the name of the Lender, or such transferee as may be designated by the Lender, as applicable.

5. Limitation of Liability. The Obligations shall be special, limited revenue obligations of the City payable solely from the revenues provided by the Borrower pursuant to the Loan Agreements and other funds pledged pursuant to the applicable Financing Documents (as hereinafter defined); the City does not pledge its general credit or taxing powers or any funds of the City to the payment of the Obligations.

No provision, covenant or agreement contained in the aforementioned documents, the Obligations, or in any other document relating to the Obligations, and no obligation therein or herein imposed upon the City or the breach thereof, shall constitute or give rise to a general or moral obligation of the City or any pecuniary liability of the City or any charge upon its general credit or taxing powers. In making the agreements, provisions, covenants, and representations set forth in such documents, the City has not obligated itself to pay or remit any funds or revenues, other than funds and revenues derived from the Loan Agreements which are to be applied to the payment of the Obligations, as provided therein and as assigned to the Trustee, under the Indenture, or the Lender, under the Loan Assignment Agreement.

6. Refunding. The Borrower shall apply the proceeds of the Series A Loan and the Series B Loan made pursuant to the terms and conditions of the Series A Loan Agreement and the Series B Loan Agreement, respectively, to the refunding of the Prior Note, and apply the unspent proceeds of the Prior Note to the payment of a portion of the capital costs of the Project and related costs.

7. Compliance with Certain Rental and Occupancy Restrictions as to the Project. To ensure compliance with certain rental and occupancy restrictions imposed by the Act and Section 142(d) of the Code and to ensure compliance with certain restrictions imposed by the City, the portion of the Project constituting Brooks Landing will be subject to a Regulatory Agreement, dated on or after August 1, 2019 (the “Brooks Landing Regulatory Agreement”), among the City, the Borrower, and the Trustee, and the portion of the Project constituting Brook Gardens will be subject to a Regulatory Agreement, dated on or after August 1, 2019 (the “Brook Gardens Regulatory Agreement” and together with the Brooks Landing Regulatory Agreement, the “Regulatory Agreements”), among the City, the Borrower, and the Trustee.

8. Approval of Forms; Execution. The Mayor and the City Manager (the “City Officials”) are hereby authorized and directed to execute and deliver the Indenture, the Loan Agreements, the Loan Assignment Agreement, Obligations, the Bond Purchase Agreement, the Regulatory Agreements, and any consents or such other documents and certificates as are necessary or appropriate in connection with the issuance, sale, and delivery of the Obligations, including without limitation various certificates of the City, the Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038, a letter prepared in accordance with Section 42(m)(2)(D) of the Code evidencing the determination of the City, as the issuer of the Obligations, based on conclusions of a third party analyst, that the amount of tax credits to be allocated to the Project will not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified low-income housing project, a certificate as to arbitrage and rebate and similar documents (collectively, the “Financing Documents”).

All of the provisions of the Financing Documents, when executed and delivered as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Financing Documents shall be substantially in the forms currently on file with the City, which are hereby approved, with such necessary and appropriate variations, omissions and insertions as do not materially change the substance thereof, and as

the City Officials, in their discretion, shall determine, and the execution thereof by the City Officials shall be conclusive evidence of such determination.

9. Bond Opinion. The City hereby authorizes Kennedy & Graven, Chartered, as bond counsel ("Bond Counsel"), to prepare, execute, and deliver its approving legal opinions with respect to the Obligations.

10. Official Statement. The City has not participated in the preparation of the Official Statement relating to the offer and sale of the Series A Bonds (the "Official Statement"), and has made no independent investigation with respect to the information contained therein, including the appendices thereto, and the City assumes no responsibility for the sufficiency, accuracy, or completeness of such information. Subject to the foregoing, the City hereby consents to the distribution and the use by the Underwriter of the Official Statement in connection with the offer and sale of the Series A Bonds. The Official Statement is the sole material consented to by the City for use in connection with the offer and sale of the Series A Bonds.

11. Council Authority; No Personal Liability. Except as otherwise provided in this resolution, all rights, powers, and privileges conferred and duties and liabilities imposed upon the City or the City Council by the provisions of this resolution or of the aforementioned documents shall be exercised or performed by the City or by such members of the City Council, or such officers, board, body or agency thereof as may be required or authorized by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in the aforementioned documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member of the City Council, or any officer, agent or employee of the City in that person's individual capacity, and neither the City Council nor any officer or employee executing the Obligations shall be personally liable on the Obligations or be subject to any personal liability or accountability by reason of the issuance thereof.

Except as otherwise expressly provided herein, nothing in this resolution or in the aforementioned documents expressed or implied, is intended or shall be construed to confer upon any person or firm or corporation, other than the City, or any holder of the Obligations issued under the provisions of this resolution, any right, remedy or claim, legal or equitable, under and by reason of this resolution or any provisions hereof, this resolution, the aforementioned documents, and all of their provisions being intended to be and being for the sole and exclusive benefit of the City, and any holder from time to time of the Obligations issued under the provisions of this resolution.

12. Severability. In case any one or more of the provisions of this resolution, other than the provisions contained Section 5, or of the aforementioned documents, or of the Obligations issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this resolution, or of the aforementioned documents, or of the Obligations, but this resolution, the aforementioned documents, and the Obligations shall be construed and endorsed as if such illegal or invalid provisions had not been contained therein.

13. Validity. The Obligations, when executed and delivered, shall contain a recital that they are issued pursuant to the Act, and such recital shall be conclusive evidence of the validity of the Obligations and the regularity of the issuance thereof, and that all acts, conditions, and things required by the laws of the State of Minnesota relating to the adoption of this resolution, to the issuance of the Obligations, and to the execution of the aforementioned documents to happen, exist, and be performed precedent to the execution of the aforementioned documents have happened, exist, and have been performed as so required by law.

14. Authorization; Direction. The officers of the City, Bond Counsel, other attorneys, engineers, and other agents or employees of the City are hereby authorized to do all acts and things required of them by or in connection with this resolution, the aforementioned documents, and the Obligations, for the full, punctual, and complete performance of all the terms, covenants, and agreements contained in the Obligations, the aforementioned documents, and this resolution. If for any reason either of the City Officials is unable to execute and deliver the documents referred to in this resolution, such documents may be executed by any member of the City Council or any officer of the City delegated the duties of such City Officials with the same force and effect as if such documents were executed and delivered by such City Officials.

15. City Costs. The Borrower has agreed to pay the administrative fees of the City when due in accordance with the terms of the Loan Agreement. In addition, the Borrower will also pay, or, upon demand, reimburse the City for payment of, any and all costs incurred by the City in connection with the Project and the issuance of the Obligations, whether or not the Obligations are issued, including any costs for attorneys' fees. The Borrower shall indemnify the City against all liabilities, losses, damages, costs and expenses (including attorney's fees and expenses incurred by the City) arising with respect to the Project or the Obligations, as provided for and agreed to by the Borrower in the Loan Agreements.

16. Future Amendments. The authority to approve, execute and deliver future amendments to the Financing Documents herein authorized entered into by the City in connection with the issuance of the Obligations and any consents required under the Financing Documents is hereby delegated to the City Officials upon consultation with Bond Counsel, subject to the following conditions: (a) such amendments or consents do not require the consent of the holder of the Obligations or such consent has been obtained; (b) such amendments or consents do not materially adversely affect the interests of the City; (c) such amendments or consents do not contravene or violate any policy of the City; and (d) such amendments or consents are acceptable in form and substance to Bond Counsel. The authorization hereby given shall be further construed as authorization for the execution and delivery of such certificates and related items as may be required to demonstrate compliance with the agreements being amended and the terms of this resolution. The execution of any instrument by the City Officials shall be conclusive evidence of the approval of such instruments in accordance with the terms hereof. In the absence of either of the City Officials, any instrument authorized by this paragraph to be executed and delivered may be executed by the officer of the City or the City authorized to act in his/her place and stead.

17. Governmental Program. The City has established a governmental program of acquiring purpose investments for qualified residential rental projects. The governmental program is one in which the following requirements of §1.148-1(b) of the federal regulations relating to tax-exempt obligations shall be met:

(a) the program involves the origination or acquisition of purpose investments;

(b) at least 95% of the cost of the purpose investments acquired under the program represents one or more loans to a substantial number of persons representing the general public, states or political subdivisions, 501(c)(3) organizations, persons who provide housing and related facilities, or any combination of the foregoing;

(c) at least 95% of the receipts from the purpose investments are used to pay principal, interest, or redemption prices on issues that financed the program, to pay or reimburse administrative costs of those issues or of the program, to pay or reimburse anticipated future losses directly related to the program, to finance additional purpose investments for the same general purposes of the program, or to redeem and retire governmental obligations at the next earliest possible date of redemption;

(d) the program documents prohibit any obligor on a purpose investment financed by the program or any related party to that obligor from purchasing Obligations of an issue that finances the program in an amount related to the amount of the purpose investment acquired from that obligor; and

(e) the City shall not waive the right to treat the investment as a program investment.

18. Effective Date. This resolution shall be in full force and effect from and after its approval. The Preliminary Resolution adopted by the City Council on December 12, 2016 with respect to the Project is supplemented but not superseded by this resolution.

**Draft**  
**Friday, July 5, 2019**

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**TRUST INDENTURE**

**between**

**CITY OF BROOKLYN PARK, MINNESOTA,**  
**as Issuer**

**and**

**U.S. BANK NATIONAL ASSOCIATION,**  
**as Trustee**

**[\$8,540,000]**

**City of Brooklyn Park, Minnesota**  
**Multifamily Housing Revenue Refunding Bonds**  
**(Amorce I Limited Partnership Project)**  
**Series 2019A**

**Dated as of August 1, 2019**

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This instrument drafted by:  
Kennedy & Graven, Chartered (SEL)  
470 US Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402

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(This Index is not a part of the Indenture  
but rather is for convenience of reference only)

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## TRUST INDENTURE

THIS TRUST INDENTURE (the “Indenture”), dated as of August 1, 2019, is made by and between the City of Brooklyn Park, Minnesota, a home rule charter city and political subdivision organized under its charter and the laws of the State of Minnesota (the “Issuer” or “City”) and U.S. Bank National Association, a national banking association, with its designated corporate trust office located in Saint Paul, Minnesota, as Trustee (the “Trustee”) under the circumstances summarized in the following recitals (the capitalized terms not defined in the recitals and granting clauses being used therein are defined in Article I hereof).

### RECITALS

WHEREAS, pursuant to and in accordance with the laws of the State of Minnesota (the “State”), including without limitation, Minnesota Statutes, Chapters 462C and 462A, as amended (the “Act”), the Issuer has determined to issue and sell its Multifamily Housing Revenue Refunding Bonds (Amorce I Limited Partnership Project), Series 2019A, in the original aggregate principal amount of \$[8,540,000] (the “Bonds” or “Series 2019A Bonds”), and to loan the proceeds to be derived from the sale thereof to Amorce I Limited Partnership, a Minnesota limited partnership (the “Borrower”), to refund the outstanding Multifamily Housing Revenue Note (Amorce I Limited Partnership Project), Series 2017, dated May 9, 2017 (the “Prior Note”), issued by the Issuer in the original aggregate principal amount of \$15,000,000 to finance the acquisition and rehabilitation of 170 units of multifamily rental apartments, and facilities functionally related and subordinate thereto, commonly known as Brooks Landing Apartments (“Brooks Landing”) and Brook Gardens Apartments and Townhomes (“Brook Gardens”), located at 5825 74th Avenue North and 5550 69th Avenue North, respectively, in the City (the “Project”); and

WHEREAS, the Bonds will be secured by this Indenture, and the Issuer is authorized to execute and deliver this Indenture and to do or cause to be done all acts provided or required herein to be performed on its part;

WHEREAS, pursuant to its lawful authority under the Act, the Issuer and the Borrower have executed that certain Loan Agreement, by the terms of which the Issuer agrees to make the Loan to the Borrower for the Project;

WHEREAS, the Loan will be evidenced by a Promissory Note, in the form attached as **Exhibit A** to the Loan Agreement, in the original principal amount of \$[8,540,000] (the “Note”), executed by the Borrower and delivered to the Issuer, and assigned by the Issuer to the Trustee;

WHEREAS, all acts and conditions required to happen, exist and be performed precedent to and in the issuance of the Bonds and the execution and delivery of this Indenture have happened, exist and have been performed, or at the delivery of the Bonds will exist, will have happened and will have been performed (i) to make the Bonds, when issued, delivered and authenticated, valid obligations of the Issuer in accordance with the terms thereof and hereof and (ii) to make this Indenture a valid, binding and legal trust agreement for the security of the Bonds in accordance with its terms; and

WHEREAS, the Trustee has accepted the trusts created by this Indenture, and in evidence thereof has joined in the execution hereof.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that to secure the payment of Bond Debt Service Charges on the Bonds according to their true intent and meaning, to secure the performance and observance of all of the covenants, agreements, obligations and conditions contained therein and herein, and to declare the terms and conditions upon and subject to which the Bonds are and are intended to be issued, held, secured and enforced, and in consideration of the premises and the acceptance by the Trustee of the trusts created herein and of the purchase and acceptance of the Bonds by the Holders, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Issuer has executed and delivered this Indenture and absolutely assigns hereby to the Trustee, and to its successors in trust, and its and their assigns, all right, title and interest of the Issuer in and to (i) the Issuer Revenues, including, without limitation, all Loan Payments and other amounts receivable by or on behalf of the Issuer under the Loan Agreement in respect of repayment of the Loan, (ii) the Special Funds, including all accounts in those funds and all money deposited therein and the investment earnings on such money; and the earnings derived from the investment of any of the foregoing sums as provided herein, (iii) all right, title and interest of the Issuer in the proceeds derived from the sale of the Bonds, and any securities in which money in the Special Funds is invested, and (except for money in the Rebate Fund and otherwise required to be rebated to the United States of America under the Code) the proceeds derived therefrom, and any and all other real or personal property of every name and nature from time to time hereafter by delivery or by writing of any kind pledged, assigned or transferred, as and for additional security hereunder by the Issuer or by anyone in its behalf, or with its written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms of this Indenture, and (iv) the Loan Agreement, except for the Unassigned Issuer's Rights (the foregoing collectively referred to as the "Trust Estate"),

TO HAVE AND TO HOLD unto the Trustee and its successors in that trust and its and their assigns forever;

BUT IN TRUST, NEVERTHELESS, and subject to the provisions hereof,

(a) except as provided otherwise herein, for the equal and proportionate benefit, security and protection of all present and future Holders of the Bonds issued or to be issued under and secured by this Indenture,

(b) for the enforcement of the payment of the principal of and interest on the Bonds, when payable, according to the true intent and meaning thereof and of this Indenture, and

(c) to secure the performance and observance of and compliance with the covenants, agreements, obligations, terms and conditions of this Indenture,

in each case, without preference, priority or distinction, as to lien or otherwise, of any one Bond over any other by reason of designation, number, date of the Bonds or of authorization, issuance, sale, execution, authentication, delivery or maturity thereof, or otherwise, so that each Bond and

all Bonds shall have the same right, lien and privilege under this Indenture and shall be secured equally and ratably hereby; provided, however, that

(i) if the principal of the Bonds and the interest due or to become due thereon shall be well and truly paid, at the times and in the manner to which reference is made in the Bonds, according to the true intent and meaning thereof, or the Outstanding Bonds shall have been paid and discharged in accordance with Article IX hereof, and

(ii) if all of the covenants, agreements, obligations, terms and conditions of the Issuer under this Indenture shall have been kept, performed and observed and there shall have been paid to the Trustee, the Registrar and the Paying Agents all sums of money due or to become due to them in accordance with the terms and provisions hereof,

then this Indenture and the rights assigned hereby shall cease, determine and be void, except as provided in Section 9.03 hereof with respect to the survival of certain provisions hereof; otherwise, this Indenture shall be and remain in full force and effect.

It is declared that all Bonds issued hereunder and secured hereby are to be issued, authenticated and delivered, and that all Issuer Revenues assigned hereby are to be dealt with and disposed of under, upon and subject to, the terms, conditions, stipulations, covenants, agreements, obligations, trusts, uses and purposes provided in this Indenture. The Issuer has agreed and covenanted, and agrees and covenants with the Trustee and with each and all Holders, as follows:

## ARTICLE I

### DEFINITIONS

#### Section 1.01 Definitions

In addition to the words and terms defined elsewhere in this Indenture or by reference to the Loan Agreement, unless the context or use clearly indicates another meaning or intent:

“*Act*” means Minnesota Statutes, Chapters 462C and 462A, as amended.

“*Additional Payments*” means the amounts required to be paid by the Borrower pursuant to the provisions of Section 4.2 of the Loan Agreement.

“*Affiliate*” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” when used with respect to any specified Person means the power to direct the policies of such Person, directly or indirectly, whether through the power to appoint and remove its directors, the ownership of voting securities, by contract, or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“*Authorized Borrower Representative*” means the person or persons designated to act on behalf of the Borrower by written certificate furnished to the Issuer and the Trustee containing the specimen signature of such person and signed on behalf of the Borrower by an officer of the General Partner, which certificate may designate an alternate or alternates.

“*Authorized Denomination*” means (a) so long as the Bonds are rated “A,” without regard to a modifier (or the equivalent) or higher by a Rating Agency, \$5,000 or any integral multiple of \$5,000 in excess thereof, or (b) at any other time, \$100,000, or any integral multiple of \$0.01 in excess thereof, except that in each case one Bond may be in a principal amount equal to the then Outstanding principal amount of the Bonds.

“*Authorized Official*” means the Mayor or City Manager and any other officer of the Issuer designated by certificate of any of the foregoing as authorized by the Issuer to perform a specified act, sign a specified document or otherwise take action with respect to the Bonds. The Trustee may conclusively presume that a person designated in a written certificate filed with it as an Authorized Official is an Authorized Official until such time as such provider files with it a written certificate identifying a different person or persons to act in such capacity.

“*Available Money*” means, as of any date of determination, any of the following, as applicable:

- (a) the proceeds of the Bonds;
- (b) the transferred proceeds of the Prior Note;
- (c) proceeds from the sale of GNMA Securities;

(d) amounts advanced by FHA Lender with respect to the FHA Lender Funds deposited directly with the Trustee by the FHA Lender;

(e) proceeds of the Subordinate Loan;

(f) any other amounts, including the proceeds of refunding bonds, for which the Trustee has received either (1) an opinion of counsel to the effect that the use of such amounts to make payments on the Bonds would not violate Section 362(a) of the Bankruptcy Code (or that relief from the automatic stay provisions of such Section 362(a) would be available from the bankruptcy court) or be avoidable as preferential payments under Section 547 of the Bankruptcy Code should the Issuer or the Borrower become a debtor in proceedings commenced under the Bankruptcy Code; or (2) a Rating Confirmation to the effect that the use of such amounts to make payments on the Bonds would not result in a withdrawal, suspension, or downgrade of the rating then in effect on the Bonds;

(g) the Underwriter's Premium;

(h) the proceeds of any letter of credit;

(i) remarketing proceeds received from the Remarketing Agent or any purchaser of Bonds (other than funds provided by the Borrower, the Issuer, any Affiliate of either the Borrower or the Issuer); or

(j) investment earnings derived from the investment of money described in (a), (b), (c), (d), (e), (f), (g), (h) or (i).

“*Bankruptcy Code*” means Title 11 of the United States Code entitled “Bankruptcy,” as in effect now and in the future, or any successor statute.

“*Bond Counsel*” shall mean Kennedy & Graven, Chartered and any other firm of nationally recognized bond counsel experienced in tax exempt bond financing selected by the Issuer and acceptable to the Borrower.

“*Bond Debt Service Charges*” means, for any period or payable at any time, the principal of and interest on the Bonds for that period or payable at that time whether due at maturity or upon redemption, Mandatory Tender or acceleration.

“*Bond Fund*” means the Bond Fund created in Section 5.01 of this Indenture.

“*Bond Payment Date*” means each Interest Payment Date and any other date Bond Debt Service Charges on the Bonds are due, whether at maturity, upon redemption, Mandatory Tender or acceleration or otherwise.

“*Bond Resolution*” means that certain resolution authorizing the issuance of the Bonds to refinance the Project, adopted by the City Council of the Issuer on July 22, 2019.

“*Bond Year*” means each annual period of twelve months the first of which commences on the date of the original issuance and delivery of the Bonds and the last of which ends on the maturity of the Bonds, except that the first and last Bond Year may be less than twelve months.

“*Bonds*” means the Series 2019A Bonds.

“*Book-Entry Form*” or “*Book-Entry System*” means, with respect to the Bonds, a form or system, as applicable, under which (i) physical Bond certificates in fully registered form are issued only to a Depository or its nominee, with the physical Bond certificates “immobilized” in the custody of the Depository and (ii) the ownership of book-entry interests in Bonds and Bond Debt Service Charges thereon may be transferred only through a book entry made by Persons other than the Issuer or the Trustee. The records maintained by Persons other than the Issuer or the Trustee constitute the written record that identifies the owners, and records the transfer, of book-entry interests in the Bonds and Bond Debt Service Charges thereon.

“*Borrower*” means Amorce I Limited Partnership, a Minnesota limited partnership, and its lawful successors and assigns to the extent permitted by the Loan Agreement.

“*Borrower Documents*” means the Loan Agreement, Note, and Regulatory Agreement.

“*Business Day*” means a day of the week, other than a Saturday or a Sunday, on which commercial banks located in the city in which the principal corporate trust office of the Trustee are not required or authorized to remain closed.

“*Cash Flow Projection*” means a cash flow projection prepared by an independent firm of certified public accountants, a financial advisory firm, a law firm or other independent third party qualified and experienced in the preparation of cash flow projections for structured finance transactions similar to the Bonds, designated by the Borrower and acceptable to the Remarketing Agent and the Rating Agency, establishing, to the satisfaction of the Remarketing Agent and the Rating Agency, the sufficiency of (a) the amount on deposit in the Project Fund and the Collateral Fund, (b) projected investment income to accrue on amounts on deposit in the Project Fund and Collateral Fund during the applicable period and (c) any additional Available Money delivered to the Trustee by or on behalf of the Borrower to pay Bond Debt Service Charges and the Additional Payments, in each instance, when due and payable, including, but not limited to, any cash flow projection prepared in connection with (i) the initial issuance and delivery of the Bonds and (ii) a proposed remarketing of the Bonds, as provided in Section 4.05.

“*City*” means the City of Brooklyn Park, Minnesota, a home rule charter city and political subdivision organized under its charter and the laws of the State of Minnesota, and any successors and assigns.

“*Closing Date*” means August [\_\_\_], 2019.

“*Code*” means the Internal Revenue Code of 1986, as amended, and all applicable regulations (whether proposed, temporary or final) under the Code and the statutory predecessor of the Code, and any official rulings and judicial determinations under the foregoing applicable to the Bonds.

“*Collateral Fund*” means the Collateral Fund created pursuant to Section 5.01 of this Indenture.

“*Combined Bonds*” means, collectively, the Series 2019A Bonds and the Series 2019B Note.

“*Completion Date*” means the date of substantial completion of the Project evidenced in accordance with the requirements of Section 3.7 of the Loan Agreement.

“*Construction Period*” means the period between the beginning of the acquisition, rehabilitation, improving and equipping of the Project and the Completion Date.

“*Continuing Disclosure Agreement*” means the Continuing Disclosure Agreement, dated as of August 1, 2019, between the Borrower and U.S. Bank National Association, as Dissemination Agent.

“*Contractual Obligation*” means for any Person any obligation, covenant, or condition contained in any evidence of Indebtedness or any agreement or instrument under or pursuant to which any evidence of Indebtedness has been issued, or any other material agreement, instrument or guaranty, to which such Person is a party or by which such Person or any of its assets or properties are bound.

“*Costs of Issuance Fund*” means the Costs of Issuance Fund created pursuant to Section 5.01 of this Indenture.

“*Depository*” means, with respect to the Bonds, DTC, until a successor Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter, Depository shall mean the successor Depository. Any Depository shall be a securities depository that is a clearing agency under federal law operating and maintaining, with its participants or otherwise, a Book-Entry System to record ownership of book-entry interests in the Bonds or Bond Debt Service Charges thereon, and to effect transfers of book-entry interests in the Bonds.

“*Disbursement Request*” shall have the meaning set forth in Section 5.03(a) hereof.

“*Disbursing Agreement*” means the Construction Loan Disbursement Agreement, dated as of the date of the FHA Note, among the Trustee, the Borrower, the FHA Lender, the Title Company, the Subordinate Lender, and [construction company].

“*DTC*” means The Depository Trust Company (a limited purpose trust company), New York, New York, and its successors or assigns.

“*DTC Participant*” means any participant contracting with DTC under its book-entry system and includes securities brokers and dealers, banks and trust companies and clearing corporations.

“*Eligible Investments*” means any of the following investments which mature (or are redeemable without penalty) at such time or times as to enable timely disbursements to be made

from the fund in which such investment is held or allocated in accordance with the terms of this Indenture:

(a) Direct obligations of the United States of America including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America, (“Government Obligations”); or

(b) Money market funds rated at the time of purchase AAAM by S&P investing in Government Obligations, which funds are registered with the Securities and Exchange Commission and which meet the requirements of Rule 2(a)(7) of the Investment Company Act of 1940, as amended, which may be administered by the Trustee or its affiliates.

Eligible Investments shall not include the following: (1) any investment with a final maturity or any agreement with a term ending later than the earlier of (i) the current Mandatory Tender Date in effect at the time of investment, (ii) the Maturity Date, (iii) one year from the date of the investment (except (A) obligations that provide for the optional or mandatory tender, at par, by the holder of such obligations at any time and (B) Government Obligations irrevocably deposited with the Trustee for payment of Bonds pursuant to Article IX), (2) any interest only or principal only stripped security, and (3) any investment which may be prepaid or called at a price less than its purchase price prior to stated maturity.

Money in the Rebate Fund shall be invested and reinvested by the Trustee in Eligible Investments at the written direction of the Authorized Borrower Representative. In the absence of instructions from the Authorized Borrower Representative, money in the Rebate Fund shall be invested in Eligible Investments described in subsection (b) of the definition of Eligible Investments. At no time shall the Borrower direct that any funds constituting gross proceeds of the Bonds be used in any manner as would constitute failure of compliance with Section 148 of the Code.

“*Event of Default*” means any of the events described as an Event of Default in Section 7.01 hereof or Section 7.1 of the Loan Agreement.

“*Extension Payment*” means the amount due, if any, in connection with the change or extension of the Mandatory Tender Date pursuant to Section 4.05, and (a) which shall be determined by a Cash Flow Projection approved in writing by the Rating Agency and (b) must consist of Available Money.

“*Extraordinary Services*” and “*Extraordinary Expenses*” mean all services rendered and all reasonable expenses properly incurred by the Trustee under this Indenture, other than Ordinary Services and Ordinary Expenses. Extraordinary Services and Extraordinary Expenses shall specifically include services rendered or expenses incurred by the Trustee in connection with, or in contemplation of, an Event of Default.

“*Favorable Opinion of Bond Counsel*” means an opinion of Bond Counsel that the action proposed will not, in and of itself, cause interest on the Bonds to become includable in gross income of the holders thereof.

“*FHA*” means the Federal Housing Administration.

“*FHA Insurance Commitment*” means the commitment for insurance of advances issued by the Federal Housing Commissioner of HUD with respect to the Project, dated [\_\_\_\_], 2019, as may be amended from time to time.

“*FHA Insurance Regulations*” means the FHA regulations promulgated under the National Housing Act, as amended.

“*FHA Insured Mortgage Loan*” means the mortgage loan in the original principal amount of \$[14,200,000] to be advanced by the FHA Lender to the Borrower and insured by FHA under Section 221(d)(4) of the National Housing Act, as amended.

“*FHA Lender*” means Dougherty Mortgage LLC, a Delaware limited liability company, its successors and assigns.

“*FHA Lender Funds*” means funds of the FHA Lender, other than proceeds of the FHA Insured Mortgage Loan, delivered to the Trustee pursuant to this Indenture and the Loan Agreement.

“*FHA Loan Documents*” means the documents related to the FHA Insured Mortgage Loan, including the FHA Insurance Commitment, the FHA Note, the FHA Mortgage, the HUD Regulatory Agreement and any and all other documents, agreements, or instruments which evidence or secure the indebtedness evidenced by the FHA Note.

“*FHA Mortgage*” means the first-lien priority Multifamily Mortgage, Assignment of Leases and Rents, and Security Agreement (Minnesota), dated as of the date of the FHA Note, from the Borrower for the benefit of the FHA Lender to secure the repayment of the FHA Note.

“*FHA Note*” means the Note (Multistate) in the amount of \$[14,200,000] dated as of August 1, 2019, from the Borrower to the FHA Lender to evidence its indebtedness under the FHA Insured Mortgage Loan.

“*Fiscal Year*” means, with respect to a Person, that period beginning on January 1 of each year and ending on December 31 of that year or such other fiscal year as shall be designated by such Person as its annual accounting period.

“*Force Majeure*” means any of the causes, circumstances or events described as constituting Force Majeure in Section 7.1 of the Loan Agreement.

“*GAAP*” means generally accepted accounting principles applied on a consistent basis.

“*General Partner*” means Amorco I GP LLC, a Minnesota limited liability company, its permitted successors and assigns.

“*GNMA*” means the Government National Mortgage Association, a corporate instrumentality of the United States within the United States Department of Housing and Urban Development organized and existing under the National Housing Act.

“*GNMA Documents*” means the GNMA Guaranty and the documents related to the GNMA Guaranty.

“*GNMA Guaranty*” means the guaranty made by GNMA pursuant to the provisions of Section 306(g) of Title III of the National Housing Act, as amended, and the regulations promulgated under the National Housing Act.

“*GNMA Mortgage-Backed Securities Guide*” means the GNMA Handbook 5500.3, as it may be amended or modified from time to time, which describes and provides instruction to the participants in the GNMA Mortgage-Backed Securities program.

“*GNMA Regulations*” means the GNMA regulations promulgated under the National Housing Act.

“*GNMA Security*” or “*GNMA Securities*” means a fully modified pass through security in the form of a CLC or a PLC issued by an approved FHA lender and guaranteed by GNMA as to timely payment of principal of and interest on a PLC and as to timely payment of interest only until maturity and timely payment of principal at maturity on a CLC, pursuant to Section 306(g) of the National Housing Act of 1934, as amended, and the regulations promulgated thereunder.

“*Government*” shall mean the government of the United States of America, the government of any other nation, any political subdivision of the United States of America or any other nation (including, without limitation, any state, territory, federal district, municipality or possession) and any department, agency or instrumentality thereof; and “*Governmental*” shall mean of, by, or pertaining to any Government.

“*HUD*” means the United States Department of Housing and Urban Development.

“*HUD Regulatory Agreement*” means the Regulatory Agreement for Multifamily Projects, dated as of the date of the FHA Note, between the Borrower and HUD, related to the FHA Insured Mortgage Loan.

“*Holder,*” “*Holder,*” or “*Holder of a Bond*” means the Person in whose name a Bond is registered on the Register.

“*Indebtedness*” shall mean for any Person (a) all indebtedness or other obligations of such Person for borrowed money or for the deferred purchase price of property or services, (b) all indebtedness or other obligations of any other Person for borrowed money or for the deferred purchase price of property or services, the payment or collection of which such Person has guaranteed (except by reason of endorsement for deposit or collection in the ordinary course of business) or in respect of which such Person is liable, contingently or otherwise, including, without limitation, by way of agreement to purchase, to provide funds for payment, to supply funds to or otherwise to invest in such other Person, or otherwise to assure a creditor against loss, (c) all indebtedness or other obligations of any other Person for borrowed money or for the deferred purchase price of property or services secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien, upon or in property (including, without limitation, accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such indebtedness or other

obligations, (d) all direct or contingent obligations of such Person in respect of letters of credit, (e) all lease obligations which have been or should be, in accordance with GAAP, capitalized on the books of such Person as lessee, and (f) guaranties of any of the foregoing; provided that Indebtedness does not include accounts payable and accrued expenses incurred in the ordinary course of business.

“*Indenture*” means this Trust Indenture, dated as of August 1, 2019, between the Issuer and the Trustee, as amended or supplemented from time to time in accordance with Article VIII hereof.

“*Independent*” when used with respect to a specified Person means such Person has no specific financial interest direct or indirect in the Borrower or any Affiliate of the Borrower and in the case of an individual is not a director, trustee, officer, partner or employee of the Borrower or any Affiliate of the Borrower and in the case of an entity, does not have a partner, director, trustee, officer, member or employee who is a director, trustee, officer or employee of any partner of the Borrower or any Affiliate of the Borrower.

“*Information Services*” means in accordance with then-current guidelines of the Securities and Exchange Commission, the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934, or any successor entity or entities designated by the Securities and Exchange Commission.

“*Initial Deposit*” means the deposit of Available Money in the amount of \$[\_\_\_\_\_] which the Borrower shall cause to be made from the Underwriter’s Premium, to the Interest Account of the Bond Fund on the Closing Date.

“*Initial Interest Rate*” means [\_\_\_\_] %.

“*Initial Mandatory Tender Date*” means January 1, 2021.

“*Initial Remarketing Date*” means the Initial Mandatory Tender Date, but only if the conditions for remarketing the Bonds on such date as provided in Section 4.05 hereof are satisfied.

“*Interest Account*” means the Interest Account within the Bond Fund created in Section 5.01 hereof.

“*Interest Payment Date*” or “*Interest Payment Dates*” means (a) each January 1 and July 1, commencing January 1, 2020, (b) any date the Bonds are called for redemption prior to maturity, (c) each Mandatory Tender Date, (d) the Maturity Date, and (e) the date of acceleration of the Bonds.

“*Interest Period*” means, initially, the period from the Closing Date to and including December 31, 2019, and thereafter, the period commencing on each succeeding Interest Payment Date and ending on the last day of that month preceding the next Interest Payment Date.

“*Interest Rate*” means the Initial Interest Rate to but not including the Initial Mandatory Tender Date, and thereafter the applicable Remarketing Rate.

“*Interest Rate for Advances*” means the rate of 6% per annum or the rate per annum which is two percent plus that interest rate announced by the Trustee in its lending capacity as a bank as its “Prime Rate” or its “Base Rate,” whichever is greater and lawfully chargeable, in whole or in part.

“*Investor Limited Partner*” means [WNC Holding, LLC, a California limited liability company, its permitted successors and assigns, including without limitation WNC Institutional Tax Credit Fund \_\_, L.P., a California limited partnership].

“*Issuer*” means the City, and any successors and assigns.

“*Issuer Revenues*” means (a) the Loan Payments, (b) all other money received or to be received by the Issuer or the Trustee in respect of repayment of the Loan, including without limitation, all money and investments in the Bond Fund, (c) any money and investments in the Project Fund and the Collateral Fund, and (d) all income and profit from the investment of the foregoing money. The term “*Issuer Revenues*” does not include any money or investments in the Rebate Fund.

“*Lien*” means any mortgage, deed of trust, lien, charge, security interest or encumbrance of any kind upon, or pledge of, any property, whether owned as of or hereafter acquired, and includes the acquisition of, or agreement to acquire, any property subject to any conditional sale agreement or other title retention agreement, including a lease on terms tantamount thereto or on terms otherwise substantially equivalent to a purchase.

“*Loan*” means the loan by the Issuer to the Borrower of the proceeds received from the sale of the Bonds.

“*Loan Agreement*” means the Loan Agreement dated as of even date with this Indenture, between the Issuer and the Borrower and assigned by the Issuer, except for Unassigned Issuer’s Rights, to the Trustee, as amended or supplemented from time to time.

“*Loan Payment Cure Period*” means a period of four Business Days following any Loan Payment Date.

“*Loan Payment Date*” means the fifth Business Day preceding each Bond Payment Date.

“*Loan Payments*” means the amounts required to be paid by the Borrower in repayment of the Loan pursuant to the provisions of the Note and Section 4.1 of the Loan Agreement.

“*Local Time*” means Central time (daylight or standard, as applicable) in Brooklyn Park, Minnesota.

“*Majority of the Holders of the Bonds*” means the Holders of more than 50% of the principal amount of the then Outstanding Bonds.

“*Mandatory Tender*” means a tender of Bonds required by Section 4.03.

“*Mandatory Tender Date*” means the latest of (a) the Initial Mandatory Tender Date and (b) if the Bonds outstanding on such date or on any subsequent Mandatory Tender Date are remarketed pursuant to Section 4.05 for a Remarketing Period that does not extend to the final maturity of the Bonds, the day after the last day of the Remarketing Period.

“*Maturity Date*” means January 1, 2022.

“*Maximum Interest Rate*” means the interest rate equal to the lesser of: (a) 8% per annum, or (b) the maximum interest rate per annum permitted by applicable State law.

“*Minimum Trustee Rating*” means a long term rating of the Trustee’s unsecured obligations with maturities in excess of one year of not less than “A” by S&P, or, if the Trustee does not have such a rating from S&P, it must have a minimum rating of its unsecured obligations with maturities of one year or less of “A-1” from S&P.

“*Note*” means the Promissory Note, in the original principal amount of \$[8,540,000], dated as of the Closing Date, in the form attached to the Loan Agreement as **Exhibit A**, evidencing the obligation of the Borrower to make Loan Payments.

“*Notice Address*” means:

To the Issuer: City of Brooklyn Park, Minnesota  
5200 85th Avenue N.  
Brooklyn Park, MN 55443  
Attn: City Finance Director

To the Trustee: U.S. Bank National Association  
Corporate Trust Services  
60 Livingston Avenue, 3rd Floor  
EP-MN-WS3C  
Saint Paul, Minnesota 55107-2292  
Attn: Dan Sheff, Vice President

To the Borrower: Amorce I Limited Partnership  
c/o Boisclair Corporation  
3033 Excelsior Blvd, Suite 215  
Minneapolis, MN 55416  
Attention: Lori Boisclair, President

With a copy to: Winthrop & Weinstine, P.A.  
Capella Tower, Suite 3500  
225 South Sixth Street  
Minneapolis, MN 55402-4629  
Attn: Todd B. Urness, Esq. and Erin E. Mathern, Esq.

To Investor Limited Partner: WNC Holding, LLC  
c/o WNC & Associates, Inc.  
37 West Bridge Street, Suite 203  
Dublin, OH 43017  
Attn: Michael Simmerman

With a copy to: Barnes & Thornburg LLP  
41 South High Street, Suite 3300  
Columbus, OH 43215-6104  
Attention: Phillip R. Westerman, Esq.

To the Remarketing Agent: Dougherty & Company LLC  
90 South Seventh Street, Suite 4300  
Minneapolis, Minnesota 55402-4108  
Attn: Frank J. Hogan

To the Rating Agency: S&P Global Ratings  
55 Water Street, 38<sup>th</sup> Floor  
New York, New York 10041  
Attn: Public Finance Surveillance Group  
Email: pubfin\_housing@spglobal.com

or such additional or different address, notice of which is given under Section 13.03 hereof.

“*Opinion of Bond Counsel*” means an opinion of Bond Counsel.

“*Opinion of Counsel*” means an opinion from an attorney or firm of attorneys, acceptable to the Issuer and the bondholder representative with experience in the matters to be covered in the opinion.

“*Ordinary Services*” and “*Ordinary Expenses*” mean those services normally rendered, and those expenses normally incurred, by a trustee under instruments similar to this Indenture. Without limiting the generality of this definition, Ordinary Services and Ordinary Expenses shall include, without limitation, services provided by the Trustee in connection with the redemption of Bonds as provided in Article IV of this Indenture and in connection with any meetings of Holders of the Bonds as provided in Article XII of this Indenture.

“*Outstanding Bonds*,” “*Bonds outstanding*” or “*outstanding*” as applied to Bonds means, as of the applicable date, all Bonds which have been authenticated and delivered, or which are being delivered by the Trustee under this Indenture, except:

- (a) Bonds cancelled upon surrender, exchange or transfer, or cancelled because of payment on or prior to that date;
- (b) Bonds, or the portion thereof, for the payment or purchase for cancellation of which sufficient money has been deposited and credited with the Trustee or the Paying

Agents on or prior to that date for that purpose (whether upon or prior to the maturity of those Bonds);

(c) Bonds, or the portion thereof, which are deemed to have been paid and discharged or caused to have been paid and discharged pursuant to the provisions of this Indenture; and

(d) Bonds in lieu of which others have been authenticated under Section 3.06 of this Indenture.

“*Paying Agent*” means the Trustee acting as such, or any other bank or trust company designated as a Paying Agent by or in accordance with this Indenture.

“*Person*” or words importing persons mean firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, corporations, limited liability companies, public or governmental bodies, other legal entities and natural persons.

“*Plans and Specifications*” means the plans and specifications describing the Project as now prepared and as they may be changed as herein provided from time to time.

“*Predecessor Bond*” of any particular Bond means every previous Bond evidencing all or a portion of the same debt as that evidenced by the particular Bond. For the purposes of this definition, any Bond authenticated and delivered under Section 3.06 of this Indenture in lieu of a lost, stolen or destroyed Bond shall, except as otherwise provided in Section 3.06, be deemed to evidence the same debt as the lost, stolen or destroyed Bond.

“*Prior Note*” means the \$15,000,000 Multifamily Housing Revenue Note (Amorce I Limited Partnership Project), Series 2017 issued by the Issuer on May 9, 2017.

“*Project*” means the financing of the acquisition and rehabilitation of 170 units of multifamily rental apartments, and facilities functionally related and subordinate thereto, commonly known as Brooks Landing Apartments and Brook Gardens Apartments and Townhomes, located at 5825 74th Avenue North and 5550 69th Avenue North, respectively, in the City;

“*Project Costs*” means the costs of the Project specified in Section 3.4 of the Loan Agreement.

“*Project Fund*” means the Project Fund created in Section 5.01 of this Indenture.

“*Project Purposes*” means the operation of the Project in accordance with the Act, the Code and the Regulatory Agreement.

“*Rating Agency*” means S&P Global Ratings (“S&P”), Moody’s Investors Service, Inc. (“Moody’s”) or any other nationally recognized municipal securities rating agency acceptable to the Holders.

“*Rebate Fund*” means the Rebate Fund created in Section 5.01 of this Indenture.

“*Register*” means the books kept and maintained by the Registrar for registration and transfer of Bonds pursuant to Section 3.05 hereof.

“*Registrar*” means the Trustee, until a successor Registrar shall have become such pursuant to applicable provisions of this Indenture; each Registrar shall be a transfer agent registered in accordance with Section 17A(c) of the Securities Exchange Act of 1934.

“*Regular Record Date*” means the fifteenth day of the calendar month next preceding an Interest Payment Date applicable to that Bond.

“*Regulatory Agreement*” means, collectively, the Regulatory Agreement, dated as of August 1, 2019, by and among the Trustee, the Issuer and the Borrower relating to Brooks Landing, and the Regulatory Agreement, dated as of August 1, 2019, by and among the Trustee, the Issuer and the Borrower relating to Brook Gardens, each as the same may be amended from time to time.

“*Remarketing Agent*” means Dougherty & Company LLC or any successor as Remarketing Agent designated in accordance with Section 6.19.

“*Remarketing Agent’s Fee*” means the fee of the Remarketing Agent for its remarketing services.

“*Remarketing Agreement*” means the Remarketing Agreement, dated as of August 1, 2019, by and between the Borrower and the Remarketing Agent, as amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

“*Remarketing Date*” means the Initial Remarketing Date and, if the Bonds Outstanding on such date or on any subsequent Remarketing Date are remarketed pursuant to Section 4.05 for a Remarketing Period that does not extend to the final maturity of the Bonds, the day after the last day of the Remarketing Period.

“*Remarketing Expenses*” means the costs and expenses incurred by the Trustee and its counsel, the Remarketing Agent and its counsel, the Issuer and its counsel, and Bond Counsel in connection with the remarketing of the Bonds, including bond printing and registration costs, costs of funds advanced by the Remarketing Agent, registration and filing fees, rating agency fees and other costs and expenses incurred in connection with or properly attributable to the remarketing of Bonds as certified to the Trustee by the Remarketing Agent in writing.

“*Remarketing Notice Parties*” means the Borrower, the Issuer, the Trustee, the Remarketing Agent, and the Investor Limited Partner.

“*Remarketing Period*” means the period beginning on a Remarketing Date and ending on the last day of the term for which Bonds are remarketed pursuant to Section 3.07 or the final Maturity Date of the Bonds, as applicable.

“*Remarketing Proceeds Account*” means the Remarketing Proceeds Account of the Bond Fund created in Section 5.01 hereof.

“*Remarketing Rate*” means the interest rate or rates established pursuant to Section 2.04(c) and borne by the Bonds then Outstanding from and including each Remarketing Date to, but not including, the next succeeding Remarketing Date or the final Maturity Date of the Bonds, as applicable.

“*Responsible Officer*” means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“*Securities Act*” means the United States Securities Act of 1933, as in effect on the Closing Date.

“*Securities Depositories*” means The Depository Trust Company, 711 Stewart Avenue, Garden City, New York 11530, Fax (516) 227 4039 or 4191; Midwest Securities Trust Company, Capital Structures – Call Notification, 440 South LaSalle Street, Chicago, Illinois 60605, Fax (312) 663 2343; Pacific Securities Depository Trust Company, Pacific and Company, P.O. Box 7041, San Francisco, California 94120, Fax (415) 393 4128; Philadelphia Depository Trust Company, Reorganization Division, 1900 Market Street, Philadelphia, Pennsylvania 19103, Attention: Bond Department, Fax (215) 496-5058; or, in accordance with the then current guidelines of the Securities and Exchange Commission to such other addresses and/or such other securities depositories or, as the Issuer may designate in a request of the Issuer delivered to the Trustee, to no such depositories.

“*Series 2017 Account*” means the Series 2017 Account within the Project Fund created in Section 5.01 hereof.

“*Series 2019A Account*” means the 2019A Bond Account within the Project Fund created in Section 5.01 hereof.

“*Series 2019A Bonds*” means the Issuer’s Multifamily Housing Revenue Refunding Bonds (Amorce I Limited Partnership Project), Series 2019A, to be issued by the Issuer pursuant to this Indenture and the Resolution in the principal amount of \$[8,540,000].

“*Series 2019B Note*” means the Issuer’s Multifamily Housing Revenue Refunding Note (Amorce I Limited Partnership Project), Series 2019B, to be issued by the Issuer pursuant to the Resolution in the principal amount of \$[5,250,000].

“*S&P*” means S&P Global Ratings.

“*Special Funds*” means, collectively, the Bond Fund, the Collateral Fund and the Project Fund, and any accounts therein, all as created in this Indenture.

“*Special Record Date*” means, with respect to any Bond, the date established by the Trustee in connection with the payment of overdue interest or principal on that Bond.

“*State*” means the State of Minnesota.

“*Subordinate Lender*” means Bridgewater Investment Management Inc., a Minnesota corporation.

“*Subordinate Loan*” means the loan from the Subordinate Lender to the Borrower in the aggregate amount of \$[5,250,000], evidenced by the Series 2019B Note.

“*Supplemental Indenture*” means any indenture supplemental to this Indenture entered into between the Issuer and the Trustee in accordance with Article VIII hereof.

“*Tax Certificate*” means the Borrower Tax Certificate executed by the Borrower as of the Closing Date with the endorsement of the Issuer.

“*Tendered Bond*” means any Bond which has been tendered for purchase pursuant to a Mandatory Tender.

“*Title Company*” means Commercial Partners Title, LLC, its permitted successors and assigns.

“*Trustee*” means U.S. Bank National Association, until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter, “Trustee” shall mean the successor Trustee.

“*Unassigned Issuer’s Rights*” means all of the rights of the Issuer to receive Additional Payments under Section 4.2 of the Loan Agreement, to inspect books and records under Section 5.1 of the Loan Agreement, to be held harmless and indemnified under Section 5.3 of the Loan Agreement, to be an insured and to receive notice of material litigation under Section 5.5 of the Loan Agreement, to notice and limited liability related to the Regulatory Agreement under Section 5.8 of the Loan Agreement, to pursue remedies upon default under Section 7.2 of the Loan Agreement to the extent provided therein with respect to Unassigned Issuer’s Rights, to be reimbursed for attorney’s fees and expenses under Section 7.4 of the Loan Agreement, to receive notices pursuant to Section 8.3 of the Loan Agreement, to give or withhold consent to amendments, changes, modifications, alterations and termination of the Loan Agreement under Section 8.6 of the Loan Agreement, to the limitation of liability under Section 8.12 of the Loan Agreement, to payment of audit expenses under Section 8.15 of the Loan Agreement, and to enforce compliance with the requirements under Section 2.2 and 2.3 of the Loan Agreement.

“*Undelivered Bond*” means any Bond that is required under this Indenture to be delivered to the Remarketing Agent or the Trustee for purchase on a Mandatory Tender Date but that has not been received on the date such Bond is required to be so delivered.

“*Underwriter*” means Dougherty & Company LLC.

“*Underwriter’s Premium*” means an amount equal to the Initial Deposit paid by the Underwriter for deposit to the Interest Account of the Bond Fund in excess of the par public offering price of the Bonds pursuant to the Bond Purchase Agreement dated [\_\_\_\_\_], 2019, among the Underwriter, the Issuer and the Borrower.

**Section 1.02 Interpretation**

Any reference herein to the Issuer, to the City Council of the Issuer or to any member or officer of either includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State or the Act, or to a section, provision or chapter of the Minnesota Statutes, or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this paragraph, if it constitutes in any way an impairment of the rights or obligations of the Issuer, the Holders, the Trustee, the Registrar, the Paying Agent, any Authenticating Agent or the Borrower under this Indenture, the Bond Resolution, the Bonds, the Loan Agreement, the Note, the Regulatory Agreement or any other instrument or document entered into in connection with any of the foregoing, including without limitation, any alteration of the obligation to pay Bond Debt Service Charges in the amount and manner, at the times, and from the sources provided in the Bond Resolution and this Indenture, except as permitted herein.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa. The terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder,” “hereinafter” and similar terms refer to this Indenture; and the term “hereafter” means after, and the term “heretofore” means before, the date of this Indenture. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

**Section 1.03 Captions and Headings**

The captions and headings in this Indenture are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

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## ARTICLE II

### AUTHORIZATION AND TERMS OF BONDS

#### **Section 2.01 Authorized Amount of Bonds**

No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The total authorized principal amount of Bonds which shall be issued under the provisions of this Indenture is \$[8,540,000]. No additional bonds may be issued hereunder.

#### **Section 2.02 Issuance of Bonds**

It is determined to be necessary to, and the Issuer shall, issue, sell and deliver \$[8,540,000] principal amount of Bonds and shall loan the proceeds thereof to the Borrower to finance the Project. The Bonds shall be designated “Multifamily Housing Revenue Refunding Bonds (Amorce I Limited Partnership Project), Series 2019A;” shall be issuable only in fully registered form, substantially as set forth in **Exhibit A** to this Indenture; shall be numbered R-1 and upward in order to distinguish each Bond from any other Bond; shall be in Authorized Denominations; shall be dated the Closing Date; and shall bear interest from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from their date of delivery.

The Bonds shall mature on the Maturity Date and shall bear interest from their dates on the principal amount outstanding at the Interest Rate, payable on each Interest Payment Date, calculated on the basis of a 360-day year consisting of twelve 30-day months.

#### **Section 2.03 Authorization of Bonds; Sale and Delivery of the Bonds**

Upon the execution and delivery hereof, the Issuer shall execute the Bonds and deliver them to the Trustee, and the Trustee shall authenticate or cause the authentication of the Bonds and deliver them to such purchaser or purchasers as shall be directed by the Issuer, provided, that there shall be previous thereto or simultaneous therewith filed with the Trustee the following:

(a) copies, certified by the City Clerk of the Issuer, of all resolutions adopted and proceedings had by the Issuer authorizing the issuance and delivery of the Bonds, including the Bond Resolution;

(b) a letter of instructions of the Issuer directing the Trustee to authenticate and deliver the Bonds against receipt of the purchase price therefor,

(c) original executed counterparts of this Indenture, the Loan Agreement, the Regulatory Agreement and the Note;

(d) an approving opinion of Bond Counsel in form and content acceptable to the Issuer and the Underwriter;

(e) an opinion of counsel for the Borrower in form and content acceptable to the Issuer, Bond Counsel and the Underwriter;

- (f) an executed Tax Certificate;
- (g) payment to the Trustee, for the account of the Issuer, of the purchase price for the Bonds of \$[8,540,000]; and
- (h) payment to the Trustee, for the account of the Issuer, from the proceeds of the Underwriter's Premium, the Initial Deposit in the amount of \$[\_\_\_\_\_] for deposit to the Interest Account of the Bond Fund.

**Section 2.04 Maturity and Interest**

(a) General. The Bonds shall bear interest on the principal amount Outstanding from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or provided for, from their date of initial delivery, payable on each Interest Payment Date. The Bonds shall bear interest for each Interest Period at the Interest Rate all as more specifically set forth hereinafter. Interest on the Bonds shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. The Bonds shall mature on the Maturity Date, subject to prior redemption as set forth in Section 4.01 hereof and subject to Mandatory Tender for purchase as set forth in Section 4.03 hereof.

(b) Initial Interest Rate. From the date of their initial delivery to but not including the Initial Mandatory Tender Date, the interest rate on the Bonds shall be the Initial Interest Rate. On the Initial Mandatory Tender Date, the Bonds shall be subject to Mandatory Tender pursuant to Section 4.03 hereof. If insufficient funds are available to pay the purchase price on the Bonds following such Mandatory Tender on the Initial Mandatory Tender Date, the Bonds shall accrue interest at the Maximum Interest Rate until funds are available for payment of the purchase price, with interest being paid monthly on the first Business Day of each month.

(c) Establishment of Remarketing Rate. The Remarketing Agent shall establish the interest rate on the Bonds outstanding for each Remarketing Period at the Remarketing Rate in accordance with this Section 2.04. Not less than 10 Business Days preceding each Remarketing Date, the Remarketing Agent, taking into consideration prevailing market conditions, shall, using its best professional judgment, determine the minimum rate(s) of interest borne by the Bonds then Outstanding for the Remarketing Period specified by the Remarketing Agent at the direction of the Borrower as provided in Section 4.05 hereof. The rate of interest determined in accordance with the previous sentence shall be the Remarketing Rate for the specified Remarketing Period; provided that if the rate of interest so determined for such period would exceed the Maximum Interest Rate, the Bonds outstanding shall be remarketed for the longest Remarketing Period for which the minimum rate of interest that would enable such Bonds to be remarketed at a price equal to 100% of the principal amount of such Bonds that would not exceed the Maximum Interest Rate. Notwithstanding the foregoing, if the rate of interest so determined for any Remarketing Period would exceed the Maximum Interest Rate, the Bonds outstanding shall not be remarketed.

(d) Notice of Remarketing Rate. The Remarketing Agent shall, upon determination of the Remarketing Rate and Remarketing Period, immediately (and in no event later than the Business Day following the day on which the Remarketing Agent makes its determination of the Remarketing Rate and the Remarketing Period) give notice of its determination by telephone,

telecopy, or e-mail promptly confirmed in writing, to the Trustee, the Issuer and the Borrower. The Remarketing Rate and the Remarketing Period shall be conclusive and binding upon the Trustee, the Issuer, the Borrower and the Holders for the purposes of this Indenture.

**Section 2.05    Special Obligations.**

The Bonds are special, limited obligations of the Issuer payable solely from the Trust Estate and any other revenues, funds and assets pledged under this Indenture and not from any other revenues, funds or assets of the Issuer. The Bonds are not general obligations, debt or bonded indebtedness of the Issuer, the State or any political subdivision thereof (other than of the Issuer to the limited extent set forth in this Indenture) and the Holders of the Bonds do not have the right to have any excises or taxes levied by the Issuer, the State or any political subdivision thereof for the payment of the principal of and any premium and interest on the Bonds. None of the Issuer, the State nor any political subdivision of the State will be obligated to pay the principal of and the interest on the Bonds or other costs incident thereto except from the Issuer Revenues pledged under this Indenture.

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## ARTICLE III

### TERMS OF BONDS GENERALLY

#### **Section 3.01**    **Form of Bonds**

The Bonds, the certificate of authentication and the form of assignment shall be in the respective forms thereof set forth in **Exhibit A** to this Indenture.

All Bonds, unless a Supplemental Indenture shall have been executed and delivered pursuant to Section 8.02 hereof, shall be in fully registered form, and, except as provided in Section 3.05 hereof, the Holder of a Bond shall be regarded as the absolute owner thereof for all purposes of this Indenture.

The Bonds shall be negotiable instruments in accordance with the Act, and shall express the purpose for which they are issued and any other statements or legends which may be required by law. Each Bond shall be of a single maturity.

#### **Section 3.02**    **Execution and Authentication of Bonds**

Each Bond shall be signed on behalf of the Issuer by the Mayor and City Manager in their official capacities (provided that signatures may be facsimiles). In case any officer whose signature or a facsimile of whose signature shall appear on any Bond shall cease to be that officer before the issuance of the Bond, his or her signature or the facsimile thereof nevertheless shall be valid and sufficient for all purposes, the same as if such officer had remained in office until that time. Any Bond may be executed on behalf of the Issuer by an officer who, on the date of execution is the proper officer, although on the date of the Bond that person was not the proper officer.

No Bond shall be valid or become obligatory for any purpose or shall be entitled to any security or benefit under this Indenture unless and until a certificate of authentication, substantially in the form set forth in **Exhibit A** to this Indenture, has been signed by the Trustee. The authentication by the Trustee upon any Bond shall be conclusive evidence that the Bond so authenticated has been duly authenticated and delivered hereunder and is entitled to the security and benefit of this Indenture. The certificate of the Trustee may be executed by any person authorized by the Trustee, but it shall not be necessary that the same authorized person sign the certificates of authentication on all of the Bonds.

#### **Section 3.03**    **Source of Payment of Bonds**

To the extent provided in and except as otherwise permitted by this Indenture, (i) the Bonds shall be special, limited obligations of the Issuer and the Bond Debt Service Charges thereon shall be payable equally and ratably solely from the Issuer Revenues, including but not limited to money and investments in the Special Funds, (ii) the payment of Bond Debt Service Charges on the Bonds shall be secured by the assignment of Issuer Revenues hereunder and by this Indenture, and (iii) payments due on the Bonds also shall be secured by the Note. Notwithstanding anything to the contrary in the Bond Resolution, the Bonds or this Indenture, the Bonds do not and shall not

represent or constitute a debt or pledge of the faith and credit or the taxing power of the Issuer or of the State or of any political subdivision, municipality or other local agency thereof.

**Section 3.04 Payment and Ownership of Bonds**

Bond Debt Service Charges shall be payable in lawful money of the United States of America without deduction for the services of the Trustee or the Paying Agent. Subject to the provisions of Section 3.09 hereof, (i) the principal of any Bond shall be payable when due to a Holder upon presentation and surrender of such Bond at the designated corporate trust office of the Trustee or at the office, designated by the Trustee, of the Paying Agent, and (ii) interest on any Bond shall be paid on the applicable Interest Payment Date by check or draft which the Trustee shall cause to be mailed on that date to the Person in whose name the Bond is registered on the Register at the close of business on the Regular Record Date applicable to that Interest Payment Date, at such Holder's address appearing therein. Notwithstanding anything to the contrary herein or in any of the Borrower Documents, the Trustee is authorized to use funds on deposit in the Special Funds, as and when provided, to pay principal and interest on the Bonds when due. Notwithstanding the foregoing, the Bonds issued under this Indenture are subject to the procedures of the Depository.

If and to the extent, however, that the Issuer shall fail to make payment or provision for payment of interest on any Bond on any Interest Payment Date, that interest shall cease to be payable to the Person who was the Holder of that Bond as of the applicable Regular Record Date. In that event, except as provided below in this Section, when money becomes available for payment of the interest, (x) the Trustee shall, pursuant to Section 7.06(d), establish a Special Record Date for the payment of that interest which shall be not more than 15 nor fewer than 10 days prior to the date of the proposed payment, and (y) the Trustee shall cause notice of the proposed payment and of the Special Record Date to be mailed by first-class mail, postage prepaid, to each Holder at its address as it appears on the Register not fewer than 10 days prior to the Special Record Date and, thereafter, the interest shall be payable to the Persons who are the Holders of the Bonds at the close of business on the Special Record Date.

Subject to the foregoing, each Bond delivered under this Indenture upon transfer thereof, or in exchange for or in replacement of any other Bond, shall carry the rights to interest accrued and unpaid, and to accrue on that Bond, or which were carried by that Bond.

Except as provided in this Section and the first paragraph of Section 3.06 hereof, (i) the Holder of any Bond shall be deemed and regarded as the absolute owner thereof for all purposes of this Indenture, (ii) payment of or on account of the Bond Debt Service Charges on any Bond shall be made only to or upon the order of that Holder or its duly authorized attorney in the manner permitted by this Indenture, and (iii) none of the Issuer, the Trustee, the Registrar nor the Paying Agent shall, to the extent permitted by law, be affected by notice to the contrary. All of those payments shall be valid and effective to satisfy and discharge the liability upon that Bond, including without limitation, the interest thereon, to the extent of the amount or amounts so paid.

**Section 3.05     Registration, Transfer and Exchange of Bonds**

The Trustee shall cause the Register to be kept for the registration of Bonds and the registration of transfers of Bonds. The registration of any Bond may be transferred only upon an assignment duly executed by the registered holder or his or her duly authorized representative in such form as shall be satisfactory to the Trustee, and upon surrender of such Bond to the Trustee for cancellation. Whenever any Bond or Bonds shall be surrendered for registration of transfer, the Issuer shall execute and the Trustee shall authenticate and deliver to the transferee a new Bond or Bonds of the same series and of Authorized Denomination or Denominations and for the amount of such Bond or Bonds so surrendered.

Any Bond may be exchanged at the designated office of the Trustee, for a new Bond or Bonds of an Authorized Denomination and for the aggregate amount of such Bond then remaining Outstanding.

In all cases in which the registration of Bonds shall be transferred or Bonds shall be exchanged hereunder, the Trustee may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange, and all such taxes, fees or charges shall be Ordinary Expenses payable as scheduled pursuant to Section 6.03 hereof. The Trustee shall not be required to transfer or exchange any Bond after notice calling such Bond for redemption has been mailed.

The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of and premium and interest on any such Bond shall be made only to or upon the order of the holder thereof, or its legal representative, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums to be paid.

Transfers are subject to the requirements of the Depository as long as the Bonds are held in Book-Entry Form. Neither the Trustee nor any agent shall have any responsibility or liability for any actions taken or not taken by the Depository.

**Section 3.06     Mutilated, Lost, Wrongfully Taken or Destroyed Bonds**

If any Bond is mutilated, lost, wrongfully taken or destroyed, in the absence of written notice to the Issuer or the Registrar that a lost, wrongfully taken or destroyed Bond has been acquired by a bona fide purchaser, the Issuer shall execute, and the Registrar shall authenticate and deliver, a new Bond of like date, maturity, and denomination as the Bond mutilated, lost, wrongfully taken or destroyed; provided, that (a) in the case of any mutilated Bond, the mutilated Bond first shall be surrendered to the Registrar, and (b) in the case of any lost, wrongfully taken or destroyed Bond, there first shall be furnished to the Registrar evidence of the loss, wrongful taking or destruction satisfactory to the Registrar, together with indemnity satisfactory to the Registrar for the Trustee, the Registrar and the Issuer.

If any lost, wrongfully taken or destroyed Bond shall have matured, instead of issuing a new Bond, the Trustee may pay that Bond without surrender thereof upon the furnishing of satisfactory evidence and indemnity as the Registrar may require, as in the case of issuance of a

new Bond. The Issuer, the Registrar and the Trustee may charge the Holder of a mutilated, lost, wrongfully taken or destroyed Bond their reasonable fees and expenses in connection with their actions pursuant to this Section.

Every new Bond issued pursuant to this Section by reason of any Bond being mutilated, lost, wrongfully taken or destroyed (i) shall constitute, to the extent of the outstanding principal amount of the Bond lost, mutilated, taken or destroyed, an additional contractual obligation of the Issuer, regardless of whether the mutilated, lost, wrongfully taken or destroyed Bond shall be enforceable at any time by anyone and (ii) shall be entitled to all of the benefits of this Indenture equally and proportionately with any and all other Bonds issued and outstanding hereunder.

All Bonds shall be held and owned on the express condition that the foregoing provisions of this Section are exclusive with respect to the replacement or payment of mutilated, lost, wrongfully taken or destroyed Bonds and, to the extent permitted by law, shall preclude any and all other rights and remedies with respect to the replacement or payment of negotiable instruments or other investment securities without their surrender, notwithstanding any law or statute to the contrary now existing or enacted hereafter.

### **Section 3.07 Cancellation of Bonds**

Any Bond surrendered pursuant to this Article for the purpose of payment or retirement or for exchange, replacement or transfer shall be cancelled upon presentation and surrender thereof to the Registrar, the Trustee or the Paying Agent. Any Bond cancelled by the Trustee or the Paying Agent shall be transmitted promptly to the Registrar by the Trustee or Paying Agent.

The Issuer, or the Borrower on behalf of the Issuer, may deliver at any time to the Registrar for cancellation any Bonds previously authenticated and delivered hereunder, which the Issuer or the Borrower may have acquired in any manner whatsoever. All Bonds so delivered shall be cancelled promptly by the Registrar. Certification of the surrender and cancellation shall be made to the Issuer and the Trustee by the Registrar upon written request to the Registrar. Unless otherwise directed by the Issuer, cancelled Bonds shall be retained and stored by the Registrar for a period of two years after their cancellation. Those cancelled Bonds shall be destroyed by the Registrar in accordance with customary practices of the Registrar at that time or at any earlier time directed by the Issuer. The costs of such storage, destruction and certification shall constitute Ordinary Expenses payable as scheduled pursuant to Section 6.03 hereof.

### **Section 3.08 Special Agreement with Holders**

Notwithstanding any provision of this Indenture or of any Bond to the contrary, with the written approval of the Borrower, the Trustee may enter into an agreement with any Holder providing for making all payments to that Holder of principal of and interest on that Bond or any part thereof (other than any payment of the entire unpaid principal amount thereof) at a place and in a manner other than as provided in this Indenture and in the Bond, without presentation or surrender of the Bond, upon any conditions which shall be satisfactory to the Trustee and the Borrower; provided, that payment in any event shall be made to the Person in whose name a Bond shall be registered on the Register, with respect to payment of principal, on the date such principal

is due, and, with respect to the payment of interest, as of the applicable Regular Record Date or Special Record Date, as the case may be.

The Trustee will furnish a copy of each of those agreements, certified to be correct by an officer of the Trustee, to the Registrar, the Issuer and the Borrower. Any payment of principal or interest pursuant to such an agreement shall constitute payment thereof pursuant to, and for all purposes of, this Indenture.

### **Section 3.09 Book-Entry Only System**

Notwithstanding any provision of this Indenture to the contrary, the Issuer may direct that all Bonds issued hereunder shall be initially issued in a Book-Entry System, registered in the name of a Depository or its nominee as registered owner of the Bonds, and held in the custody of that Depository. Unless otherwise requested by a Depository, a single certificate will be issued and delivered to the Depository for each maturity of Bonds. Beneficial owners of Bonds in a Book-Entry System will not receive physical delivery of Bond certificates except as provided hereinafter. For so long as a Depository shall continue to serve as securities depository for the Bonds as provided herein, all transfers of beneficial ownership interests will be made by book-entry only, and no investor or other party purchasing, selling or otherwise transferring beneficial ownership of Bonds is to receive, hold or deliver any Bond certificate; provided; that, if a Depository fails or refuses to act as securities depository for the Bonds, the Issuer shall take the actions necessary to provide for the issuance of Bond certificates to the Holders of such Bonds.

With respect to Bonds registered in the name of a Depository, the Issuer, the Borrower and the Trustee shall have no responsibility or obligation to any participant therein or to any Person on whose behalf any participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, none of the Issuer, the Borrower or the Trustee shall have any responsibility or obligation with respect to (i) the accuracy of the records of the Depository or any participant therein or any other Person, other than a registered owner of the Bonds, as shown on the registration books, or (ii) any notice with respect to the Bonds or (iii) the payment to any participant in the Depository or any other Person, other than a registered owner of the Bonds, as shown in the registration books, of any amount with respect to principal of or interest on or purchase price of the Bonds.

Replacement Bonds may be issued directly to beneficial owners of Bonds other than a Depository, or its nominee, but only in the event that (i) the Depository determines not to continue to act as securities depository for the Bonds (which determination shall become effective no less than 90 days after written notice to such effect to the Issuer and the Trustee); or (ii) the Issuer has advised a Depository of its determination (which determination is conclusive as to the Depository and beneficial owners of the Bonds) that the Depository is incapable of discharging its duties as securities depository for the Bonds; or (iii) the Issuer has determined (which determination is conclusive as to the Depository and the beneficial owners of the Bonds) that the interests of the beneficial owners of the Bonds might be adversely affected if such book-entry only system of transfer is continued. Upon occurrence of any of the foregoing events, the Issuer and the Borrower shall use commercially reasonable efforts to attempt to locate another qualified securities depository. If the Issuer and the Borrower fail to locate another qualified securities depository to replace the Depository, the Issuer and the Borrower, at the Borrower's expense, shall cause to be

authenticated and delivered replacement Bonds, in certificate form, to the beneficial owners of the Bonds. In the event that the Issuer makes the determination noted in (ii) or (iii) above (provided that the Issuer undertakes no obligation to make any investigation to determine the occurrence of any events that would permit the Issuer to make any such determination), and has made provisions to notify the beneficial owners of Bonds of such determination by mailing an appropriate notice to the Depository, it and the Borrower shall cause to be issued replacement Bonds in certificate form to beneficial owners of the Bonds as shown on the records of the Depository provided to the Issuer.

Upon the written consent of 100% of the beneficial owners of the Bonds, the Trustee shall withdraw the Bonds from any Depository and authenticate and deliver Bonds fully registered to the assignees of that Depository or its nominee. If the request for withdrawal is not the result of any Issuer action or inaction, such withdrawal, authentication and delivery shall be at the cost and expense (including costs of printing, preparing and delivering such Bonds) of the persons requesting such withdrawal, authentication and delivery; otherwise such withdrawal, authentication and delivery shall be at the cost and expense of the Borrower.

Whenever, during the term of the Bonds, the beneficial ownership thereof is determined by a book entry at a Depository, (i) the requirements in this Indenture of holding, delivering or transferring Bonds shall be deemed modified to require the appropriate Person or entity to meet the requirements of the Depository as to registering or transferring the book entry to produce the same effect and (ii) delivery of the Bonds will be in accordance with arrangements among the Issuer, the Trustee and the Depository notwithstanding any provision of this Indenture to the contrary.

The Trustee and the Issuer shall enter into any letter of representation with a Depository to implement the Book-Entry System of bond registration described above.

Neither the Trustee nor any of its agents shall have any responsibility or liability for any actions taken or not taken by DTC.

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## ARTICLE IV

### REDEMPTION, MANDATORY TENDER AND REMARKETING OF BONDS

#### **Section 4.01**    **Redemption of Bonds**

The Bonds are subject to redemption prior to maturity as provided in this Section.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Bonds shall relate, in the case of any Bond redeemed or to be redeemed only in part, to the portion of the principal of such Bond that has been or is to be redeemed, provided, however, that Bonds shall be redeemed in part only in such amounts that the Bonds remaining outstanding after a redemption shall in all events be in Authorized Denominations.

On each redemption date the Trustee shall transfer to the Registrar, but only from and to the extent of funds held by the Trustee hereunder available for such purpose, an amount sufficient to pay the redemption price of all Bonds or portions thereof to be redeemed on such redemption date.

The Bonds are not subject to redemption prior to the Initial Mandatory Tender Date. After the Initial Mandatory Tender Date, the Bonds shall be redeemed, in whole or in part, at a price equal to the principal amount thereof plus accrued interest to the date fixed for redemption, on any Business Day on and after the date that is 50% of the period between the most recent Mandatory Tender Date and the next succeeding Mandatory Tender Date (or, if none, the Maturity Date) in the event the Borrower prepays the Note and amounts are paid from the proceeds of refunding bonds or otherwise from Available Money upon the written direction of the Borrower delivered to the Issuer and the Trustee.

#### **Section 4.02**    **Notice of Redemption**

(a) Not less than 20 days prior to the redemption date, the Trustee shall give written notice of redemption to the Holders (with a copy to the Borrower, the Investor Limited Partner, and the Remarketing Agent) by first class mail, postage prepaid, at their respective addresses appearing on the Register. The notice shall state:

- (1) the redemption date;
- (2) the redemption price;
- (3) if less than all Outstanding Bonds are to be redeemed, the identification by designation, letters, numbers or other distinguishing marks (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed;
- (4) that on the redemption date the redemption price of each such Bond will become due and payable to the extent of funds on deposit with the Trustee for that purpose, and that interest on the principal amount of each such Bond to be redeemed shall cease to accrue on such date;

(5) the place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the office of the Trustee designated in such notice; and

(6) such additional information as the Trustee or the Issuer shall deem appropriate.

(b) In addition to the foregoing notice, further notice shall be given by the Trustee as set out below, but no defect in such further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as above prescribed. Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption and in addition (i) the complete official title, including series designation, delivery date, interest rate and maturity date of each Bond being redeemed, (ii) the certificate and CUSIP number of each such Bond, and, in the case of a partial redemption, the amount of the principal represented by each such certificate that is being redeemed, (iii) the date of mailing of official notice of redemption, and (iv) any other descriptive information needed to identify accurately the Bonds being redeemed. Further notices of redemption shall be sent by first class mail.

(c) Further notices of redemption shall be sent by first-class mail or overnight delivery service to any Holder owning, on the date such notice is sent, Bonds in the aggregate principal amount of \$1,000,000 or more.

(d) If the Bonds are not then being held under a book-entry system, each further notice of redemption shall be sent at least 30 days before the redemption date by first class mail or overnight delivery service to the Securities Depositories and to the Information Services. This further notice of redemption sent to the Securities Depositories pursuant to the preceding sentence shall be sent at such time as shall insure that such notice is received at least two Business Days before official notice of such redemption is received.

(e) A second notice of redemption shall be sent by the same means as the first such notice not later than 60 days after the redemption date to any Holder who shall not have presented for payment the Bond or Bonds called for redemption within 30 days after such date.

(f) In the event the Bonds are called for redemption under circumstances resulting in discharge of this Indenture under Section 9.02 hereof more than 90 days before the redemption date, additional official and further notice of redemption satisfying the requirements of this Section shall be given not less than 30 nor more than 60 days prior to such redemption date.

(g) Failure to give any official or further notice or any defect therein shall not affect the validity of the proceedings for redemption of any Bond with respect to which no such failure or defect has occurred or exists.

Any notice of the redemption of Bonds may state that such notice is conditional and that if the conditions for redemption of such Bonds on the scheduled redemption date are not satisfied (including the availability of funds sufficient to redeem such Bonds), such Bonds will not be redeemed on such date and any Bonds tendered for payment on such date will be returned to the Holders thereof.

Notice of redemption having been given as aforesaid, except as provided below, the principal amount of the Bonds so to be redeemed shall become due and payable on the redemption date at the redemption price specified, and on and after such date (unless the Issuer shall default in the payment of the redemption price) such principal amount of the Bonds shall cease to bear interest. Upon surrender of any such Bond for redemption in accordance with such notice, such Bond shall be paid at the redemption price thereof to the extent that money is on deposit with the Registrar for that purpose. Neither the failure of a Holder to receive such notice nor any defect in any notice shall affect the sufficiency of the proceedings for such redemption. If any Bond called for redemption shall not be so paid on the redemption date upon proper surrender of the Bond for redemption, the redemption price and, to the extent lawful, interest thereon shall, until paid, bear interest from the redemption date at the rate borne by the Bond immediately before the redemption date.

If any Bond is to be redeemed only in part, it shall be surrendered to the Registrar (with, if the Registrar so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Registrar duly executed by, the Holder thereof or its attorney duly authorized in writing) and the appropriate officers of the Issuer shall execute and the Registrar shall authenticate and deliver to the Holder of such Bond, without service charge, a new Bond or Bonds of the same interest rate and of any Authorized Denomination or Authorized Denominations, as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Bond surrendered.

#### **Section 4.03 Mandatory Tender**

(a) Mandatory Tender for Purchase. All Outstanding Bonds shall be subject to mandatory tender by the Holders for purchase in whole and not in part on each Mandatory Tender Date. The purchase price for each such Bond shall be payable in lawful money of the United States of America by check or draft, shall equal 100% of the principal amount to be purchased and accrued interest, if any, to the Mandatory Tender Date, and shall be paid in full on the applicable Mandatory Tender Date.

(b) Mandatory Tender Dates. The Mandatory Tender Dates shall consist of (i) the Initial Mandatory Tender Date and (ii) any subsequent dates for mandatory tender of the Bonds established by the Borrower with the consent of the Remarketing Agent in connection with a remarketing of the Bonds pursuant to Section 4.05 hereof.

(c) Holding of Tendered Bonds. While tendered Bonds are in the custody of the Trustee pending purchase pursuant hereto, the tendering Holders thereof shall be deemed the owners thereof for all purposes, and interest accruing on tendered Bonds through the day preceding the applicable Mandatory Tender Date is to be paid as if such Bonds had not been tendered for purchase.

(d) Effect of Prior Redemption. Notwithstanding anything herein to the contrary, any Bond tendered under this Section 4.03 will not be purchased if such Bond matures or is redeemed on or prior to the applicable Mandatory Tender Date.

(e) Purchase of Tendered Bonds. The Trustee shall utilize the following sources of payments to pay the tender price of the Bonds not later than 2:30 p.m. Local Time on the Mandatory Tender Date in the following priority; (i) amounts representing proceeds of remarketed Bonds deposited in the Remarketing Proceeds Account, to pay the principal amount, plus accrued interest, of Bonds tendered for purchase, (ii) amounts on deposit in the Collateral Fund, to pay the principal amount of Bonds tendered for purchase, (iii) amounts on deposit in the Interest Account of the Bond Fund to pay the accrued interest; if any, on Bonds tendered for purchase, (iv) amounts on deposit in the Project Fund to pay the accrued interest, if any, on the Bonds tendered for purchase and (v) any other Available Money available or made available for such purpose at the written direction of the Borrower.

(f) Undelivered Bonds. Bonds shall be deemed to have been tendered for purposes of this Section 4.03 whether or not the Holders shall have delivered such Undelivered Bonds to the Trustee, and subject to the right of the Holders of such Undelivered Bonds to receive the purchase price of such Bonds and interest accrued thereon to the Mandatory Tender Date, such Undelivered Bonds shall be null and void. If such Undelivered Bonds are to be remarketed, the Trustee shall authenticate and deliver new Bonds in replacement thereof pursuant to the remarketing of such Undelivered Bonds.

#### **Section 4.04 Mandatory Tender Notice**

(a) Notice to Holders. Not less than 30 days preceding a Mandatory Tender Date, the Trustee shall give written notice of mandatory tender to the Holders of the Bonds then Outstanding (with a copy to the Borrower, Investor Limited Partner, and the Remarketing Agent) as set forth in **Exhibit B** to this Indenture by e-mail or first class mail, postage prepaid, at their respective addresses appearing on the Register stating:

(i) the Mandatory Tender Date and that (a) all Outstanding Bonds are subject to mandatory tender for purchase on the Mandatory Tender Date, (b) all Outstanding Bonds must be tendered for purchase no later than 12:00 Noon Local Time on the Mandatory Tender Date and (c) Holders will not have the right to elect to retain their Bonds;

(ii) the address of the designated office of the Trustee at which Holders should deliver their Bonds for purchase and the date of the required delivery;

(iii) that all Outstanding Bonds will be purchased on the Mandatory Tender Date at a price equal to the principal amount of the Outstanding Bonds plus interest accrued to the Mandatory Tender Date; and

(iv) any Bonds not tendered will nevertheless be deemed to have been tendered and will cease to bear interest from and after the Mandatory Tender Date.

(b) Second Notice. If the Bonds are not in the Book-Entry System and in the event that any Bond required to be delivered to the Trustee for payment of the purchase price of such Bond shall not have been delivered to the Trustee on or before the 30th day following a Mandatory Tender Date, the Trustee shall e-mail or mail a second notice to the Holder of the Bond at its

address as shown on the Register setting forth the requirements set forth in this Indenture for delivery of the Bond to the Trustee and stating that delivery of the Bond to the Trustee (or compliance with the provisions of this Indenture concerning payment of lost, stolen or destroyed Bonds) must be accomplished as a condition to payment of the purchase price or redemption price applicable to the Bond.

(c) Failure to Give Notice. Neither failure to give or receive any notice described in this Section 4.04, nor the lack of timeliness of such notice or any defect in any notice (or in its content) shall affect the validity or sufficiency of any action required or provided for in this Section 4.04.

#### **Section 4.05 Remarketing of Bonds**

(a) Notice of Mandatory Tender. No later than 11:00 a.m. Local Time on the 35th day prior to each Mandatory Tender Date, the Trustee shall give notice to the Borrower, Investor Limited Partner and the Remarketing Agent by telephone or telecopy, confirmed on the same day in writing, which states the aggregate principal amount of Bonds which are to be tendered or deemed to be tendered pursuant to Section 4.03 hereof.

(b) Preliminary Conditions to Remarketing. No later than 11:00 a.m. Local Time on the 15th day prior to the Mandatory Tender Date then in effect, the Borrower may give notice to the Remarketing Notice Parties by telephone or telecopy, confirmed on the same day in writing, that it elects to cause the Bonds to be remarketed. A remarketing of the Bonds shall be permitted only if the following conditions are satisfied no later than the time the foregoing election notice is given:

(i) Notice by the Borrower to the Remarketing Agent of the Remarketing Period pursuant to Section 3.10 of the Loan Agreement;

(ii) Delivery to the Trustee and the Remarketing Agent of a preliminary Cash Flow Projection with respect to the proposed Remarketing Period; and

(iii) The Issuer and the Borrower shall each have notified the Trustee in writing that it has approved as to form and substance any disclosure document or offering materials which, in the Opinion of Counsel to the Remarketing Agent, is necessary to be used in connection with the remarketing of the Outstanding Bonds.

(c) Remarketing. Not less than 10 days before each Remarketing Date, the Remarketing Agent shall offer for sale and use its best efforts to sell the Bonds Outstanding on the Remarketing Date at a price equal to 100% of the principal amount of such Bonds plus, if such Remarketing Date is a date other than an Interest Payment Date, accrued interest on such Bonds from the preceding Interest Payment Date to which interest has been paid. Not less than 4 Business Days before each Remarketing Date, the Remarketing Agent shall give notice, by telephone or telecopy, promptly confirmed in writing, to the Remarketing Notice Parties specifying the principal amount of Bonds, if any, it has remarketed (including Bonds to be purchased by the Remarketing Agent on the Remarketing Date for its own account), the Remarketing Rate(s) and the Remarketing Period applicable to the Bonds.

The Remarketing Agent shall have the right to remarket any Bond tendered pursuant to Section 4.03 hereof; provided, however, that no such Bond shall be remarketed at a price less than 100% of the principal amount thereof plus accrued interest (if any) without the prior written consent of the Borrower; and provided, further, that the purchase price of any Bond paid to the tendering Holder allocable to such discount shall be paid with Available Money made available by the Borrower therefor and on deposit with the Trustee prior to the remarketing of such Bonds. The Remarketing Agent shall have the right to purchase any Bond tendered or deemed tendered pursuant to Section 4.03 hereof at 100% of the principal amount thereof, and to thereafter sell such Bond. Any such purchase shall constitute a remarketing hereunder.

The Remarketing Agent shall not remarket any Bond to the Issuer, the Borrower, any guarantor of the Bonds or any person which is an “insider” of the Issuer, Borrower, or any such guarantor within the meaning of the Bankruptcy Code.

(d) Final Conditions to Remarketing. If, not less than four (4) Business Days preceding the Remarketing Date:

(i) the Remarketing Agent shall have notified the Trustee in writing of the remarketing of the Outstanding Bonds and that the proceeds from the remarketing (including proceeds of remarketing of Outstanding Bonds to be purchased by the Remarketing Agent on the Remarketing Date for its own account) or other funds equal to the amount needed to purchase the remarketed Bonds on the Remarketing Date are expected to be available to the Trustee on the Remarketing Date for deposit into the Remarketing Proceeds Account;

(ii) the Trustee shall have received written confirmation that the Rating Agency shall have received and approved a Cash Flow Projection based on the interest rate(s) to be in effect with respect to the Outstanding Bonds on and after the Remarketing Date;

(iii) there shall be on deposit with the Trustee, from Available Money provided by the Borrower an amount sufficient to pay the Extension Payment set forth in the Cash Flow Projection for deposit to the Interest Payment Account of the Bond Fund with respect to the payment of Bond Service Charges during the new Remarketing Period;

(iv) there shall either (A) be on deposit with the Trustee, from Available Money provided by the Borrower an amount sufficient to pay the estimated Remarketing Expenses as certified in writing to the Trustee by the Borrower for deposit in the Costs of Issuance Fund, or (B) the Remarketing Agent shall have certified in writing to the Trustee that provision for the payment of the estimated Remarketing Expenses shall have been made to the satisfaction of the Remarketing Agent: and

(v) the Trustee shall have received written notice from the Remarketing Agent that the Remarketing Agent has received a Rating Confirmation from the Rating Agency;

then the Trustee shall immediately give notice, by telephone or telecopy, which notice shall be immediately confirmed in writing, to the Remarketing Agent, the Borrower and Investor Limited Partner that (a) all conditions precedent to the remarketing of the Outstanding Bonds have been satisfied and (b) the sale and settlement of the Outstanding Bonds is expected to occur on the

Remarketing Date. Following the Trustee's notice, the Outstanding Bonds shall be sold to the purchasers identified by the Remarketing Agent for delivery and settlement on the Remarketing Date, and the Trustee shall apply the funds in the Remarketing Proceeds Account of the Bond Fund on the Remarketing Date to payment of the purchase price of the Outstanding Bonds.

(e) Failure to Satisfy Final Conditions. If, not less than four (4) Business Days preceding a Remarketing Date, any condition set forth in paragraph (d) of this Section 4.05 has not been satisfied, then, unless the Outstanding Bonds are otherwise purchased on the Remarketing Date the Remarketing Agent shall not sell any of the Outstanding Bonds on the Remarketing Date.

(f) Remarketing Proceeds. No later than 11:00 a.m. Local Time on each Remarketing Date, the Remarketing Agent shall pay to the Trustee, in immediately available funds, the proceeds theretofore received by the Remarketing Agent from the remarketing of Bonds tendered for purchase on such Remarketing Date; provided, that the Remarketing Agent may use its best efforts to cause the purchasers of the remarketed Bonds to pay the purchase price plus accrued interest (if any) to the Trustee in immediately available funds. The proceeds from the remarketing of the Bonds shall be segregated from any funds of the Borrower and the Issuer and shall in no case be considered to be or be assets of the Borrower or the Issuer. Funds representing remarketing proceeds received by the Remarketing Agent after 11:00 a.m. Local Time on each Remarketing Date shall be paid to the Trustee as soon as practicable upon such receipt.

(g) Delivery of Purchased Bonds. On or before the Business Day next preceding each Remarketing Date, the Remarketing Agent, by telephonic advice, shall notify the Trustee of (i) the principal amount of Bonds to be sold by the Remarketing Agent pursuant to this Section 4.05 and the purchase price, and, unless the Bonds are then in the Book Entry System, the names, addresses and social security numbers or other tax identification numbers of the proposed purchasers thereof and (ii) the principal amount of Bonds tendered for purchase on such Remarketing Date which will not be sold by the Remarketing Agent pursuant to this Section 4.05. Such telephonic advice shall be confirmed by written notice delivered or electronically communicated at the same time as the telephonic advice.

Bonds purchased by the Trustee on a Mandatory Tender Date that have been remarketed shall be delivered to the purchasers thereof as directed by the Remarketing Agent. Bonds delivered as provided in this Section shall be registered in the manner directed in writing by the recipient thereof.

#### **Section 4.06 Cancellation of Bonds**

The Trustee shall immediately cancel Bonds if the tender price of the Bonds is paid from amounts other than proceeds derived from the remarketing of the Bonds.

## ARTICLE V

### PROVISIONS AS TO FUNDS, PAYMENTS, PROJECT AND AGREEMENT

#### **Section 5.01     Creation of Funds; Allocation of Bond Proceeds**

(a) The funds and accounts described in this Section, designated as indicated are created by this Section 5.01 in this Indenture. Each fund is to be maintained in the custody of the Trustee as a separate account. The funds and accounts are:

- (1) the Bond Fund designated “Bond Fund,” and therein, the “Interest Account” and the “Remarketing Proceeds Account;”
- (2) the Project Fund designated “Project Fund” and therein, the “Series 2017 Account” and the “Series 2019A Account;”
- (3) the Collateral Fund designated “Collateral Fund;”
- (4) the Costs of Issuance Fund designated “Costs of Issuance Fund;” and
- (5) the Rebate Fund designated “Rebate Fund.”

(b) On the Closing Date, (1) proceeds of the sale of the Bonds (including without limitation, premium, if any, and interest accrued thereon) in the amount of \$[8,540,000] shall be deposited by the Trustee to the Series 2019A Account of the Project Fund, and (2) transferred proceeds of the Prior Note in the amount of \$[8,540,000], shall be deposited by the Trustee to the Series 2017 Account of the Project Fund. Proceeds of the sale of the Bonds in the amount of \$[8,540,000] deposited to the Series 2019A Account of the Project Fund shall be transferred by the Trustee and applied, together with proceeds of the sale of the Series 2019B Note (including without limitation, premium, if any, and interest accrued thereon) in the amount of \$[5,250,000], to the redemption and prepayment the Prior Note and the accrued interest thereon in full. In addition, the Trustee shall cause the Initial Deposit to be deposited to the Interest Account of the Bond Fund.

#### **Section 5.02     Application of Loan Payments**

So long as there are any Outstanding Bonds, any payments made by the Borrower pursuant to the Note and the Loan Agreement shall be paid on each Loan Payment Date directly to the Trustee and deposited into the Bond Fund, to be used to pay the interest and principal (if any) on the Bonds on the next succeeding Interest Payment Date; provided that so long as there are amounts available therefor, for purposes of paying interest on the Loan when due the Trustee shall debit the Interest Account in the amount of interest due on the Bonds on each Interest Payment Date and transfer the same to the Bond Fund to pay interest due on the Bonds on each Interest Payment Date; and provided further that so long as there are amounts available therefor, for purposes of making principal payments on the Loan when due the Trustee shall debit the Collateral Fund and transfer the same to the Bond Fund to pay the principal of the Bonds on the date set for redemption of the Bonds or payment of the Bonds on the Maturity Date.

### **Section 5.03     Disbursements from the Project Fund**

(a)     Requisitions. Subject to the provisions of this Section 5.03(a) and Section 5.03(b) below, other than the transfer of proceeds of the sale of the Bonds in the amount of \$[8,540,000] on the Closing Date from the Series 2019A Account of the Project Fund to redeem and prepay the Prior Note and the accrued interest thereon, which shall be made in accordance with the closing memorandum and without a Disbursement Request, the Trustee shall make disbursements from the Series 2017 Account of the Project Fund to pay Project Costs only upon the receipt of a written request of the Borrower in accordance with the Disbursing Agreement, the Loan Agreement, and this Indenture substantially in the form attached to **Exhibit E** of the Loan Agreement (a “Disbursement Request”).

(b)     Project Fund. When the Trustee receives a Disbursement Request for a disbursement from the Series 2017 Account of the Project Fund in accordance with the provisions of Section 5.03(a) above, Sections 3.4 and 3.5 of the Loan Agreement, and the Disbursing Agreement, subject to the following paragraph, the Trustee shall confirm that Available Money equal to or greater than the sum of (a) the amount set forth in the Disbursement Request and (b) all prior disbursements made, is on deposit in the Collateral Fund. Upon confirmation of the items above, the Trustee shall thereafter disburse the funds from the Series 2017 Account of the Project Fund to pay Project Costs in the requested amount pursuant to the Disbursement Request directly to (a) the FHA Lender, or at the direction of the FHA Lender as provided in Section 3.5(d) of the Loan Agreement, to the extent the corresponding deposit of Available Money to the Collateral Fund was made by or at the direction of the FHA Lender (as confirmed in the Disbursement Request) or (b) the Borrower (or any other party designated in the Disbursement Request) to the extent the corresponding deposit of Available Money to the Collateral Fund was made by or at the direction of the Borrower or such other party. Any interest earnings on the Project Fund shall be credited to the Interest Account of the Bond Fund.

There shall be deposited in the Collateral Fund Available Money in such amounts as may be necessary to allow the Trustee to disburse funds from the Series 2017 Account of the Project Fund, pursuant to Section 5.03 hereof, upon the Trustee’s receipt of a Disbursement Request from the Borrower to pay Project Costs. Notwithstanding the requirements of this Section 5.03(b), on the Closing Date, \$[8,540,000] of proceeds of the sale of the Bonds will be transferred from the Series 2019A Account of the Project Fund to redeem and prepay the Prior Note without a corresponding deposit of Available Money to the Collateral Fund. A corresponding deposit of transferred proceeds of the Prior Note in the amount of \$[8,540,000] shall be made in the Series 2017 Account of the Project Fund.

For purposes of complying with the requirements of this Section, the Trustee may conclusively rely and shall be protected in acting or refraining from acting upon the form of Disbursement Request, which may be submitted by email (PDF) or facsimile. The Trustee shall not be bound to make an investigation into the facts or matters stated in any form of Disbursement Request. The Trustee shall not be responsible for determining whether the funds on hand in the Series 2017 Account of the Project Fund are sufficient to complete the Project. The Trustee shall not be responsible to collect lien waivers.

(c) Records. The Trustee shall cause to be kept and maintained adequate records pertaining to the Project Fund and all disbursements therefrom as herein provided. If requested by the Issuer or the Borrower, or the Investor Limited Partner, the Trustee shall file copies of the records pertaining to the Project Fund and disbursements therefrom with the Issuer and the Borrower and the Investor Limited Partner.

The unspent proceeds of the Prior Note, which become transferred proceeds of the Bonds upon redemption of the Prior Note, shall be used exclusively to pay costs that (i) are (A) capital expenditures (as defined in Section 1.150-1(a) of the Code's regulations) and (B) not made for the acquisition of existing property, to the extent prohibited in Section 147(d) of the Code, and (ii) are made exclusively with respect to a "qualified residential rental project" within the meaning of Section 142(d) of the Code so that the Project and the land on which it is located will have been financed 50% or more by the proceeds of the Bonds for the purpose of complying with Section 42(h)(4)(B) of the Code; provided, however, the foregoing representation, covenant and warranty is made for the benefit of the Borrower and its partners and neither the Trustee nor the Issuer shall have any obligation to enforce this covenant nor shall they incur any liability to any person, including without limitation, the Borrower, the partners of the Borrower, any other affiliate of the Borrower or the holders of the Bonds for any failure to meet the intent expressed in the foregoing representation, covenant and warranty; and provided further, that failure to comply with this representation, covenant and warranty shall not constitute a default or Event of Default under this Indenture.

Upon the occurrence and continuance of an Event of Default hereunder because of which the principal amount of the Bonds has been declared to be due and immediately payable pursuant to Section 7.03 hereof, any money remaining in the Project Fund shall be promptly transferred by the Trustee to the Bond Fund.

All payments made from the Project Fund shall be presumed by the Trustee to be made for the purposes certified in said written requests, and the Trustee shall not be required to see to the application of any payments made from the Project Fund or to inquire into the purposes for which withdrawals are being made from the Project Fund. The Trustee shall not be bound to make an investigation into the facts or matters stated in any written request. The Trustee shall not be responsible for determining whether the funds on hand in the Project Fund are sufficient to complete the Project. The Trustee shall have no responsibility whatsoever to disburse or transfer funds absent written instructions from the Borrower

#### **Section 5.04    Bond Fund**

There shall be deposited in the Bond Fund (1) the amounts set forth in Section 5.01, if any, (2) interest earnings on the Project Fund and the Collateral Fund and (3) amounts set forth under this Section 5.04.

The Bond Fund (and the Interest Account and the Remarketing Proceeds Account therein) and the money and Eligible Investments therein shall be used solely and exclusively for the payment of Bond Debt Service Charges as they become due and at stated maturity, or upon redemption, mandatory tender, or acceleration, all as provided herein and in the Loan Agreement. Any Extension Payment received by the Trustee in connection with an extension of the Mandatory

Tender Date pursuant to Section 4.05 hereof shall be deposited in the Interest Account of the Bond Fund.

The Trustee shall transmit to the Paying Agent, as appropriate, from money on deposit in the Bond Fund, amounts sufficient to make timely payments of Bond Debt Service Charges on the Bonds. To the extent that the amount needed by the Paying Agent is not sufficiently predictable, the Trustee may make any credit arrangements with the Paying Agent which will permit those payments to be made. The Issuer authorizes and directs the Trustee to cause withdrawal of money from the Bond Fund which is available for the purpose of paying, and is sufficient to pay, Bond Debt Service Charges on the Bonds as they become due and payable, for the purposes of paying or transferring money to the Paying Agent which is necessary to pay such Bond Debt Service Charges. Amounts credited to or on deposit in the Interest Account shall be transferred to the Bond Fund on each Loan Payment Date in order to provide for the payment of Bond Debt Service Charges on the next succeeding Bond Payment Date. To the extent available, the Trustee shall transfer money on deposit in the Remarketing Proceeds Account to the Bond Fund on the Mandatory Tender Date for the purpose of paying the purchase price of the Bonds.

In the event that amounts on deposit in the Bond Fund on any Loan Payment Date are insufficient to make the payment of Bond Debt Service Charges due on the next succeeding Bond Payment Date, the Trustee shall transfer funds in the following order to the Bond Fund and use such funds, together with amounts then on deposit in the Bond Fund, to pay the Bond Debt Service Charges due on the next succeeding Bond Payment Date:

- (1) first, from amounts on deposit in the Interest Account or the Remarketing Proceeds Account of the Bond Fund, as applicable;
- (2) second, from amounts on deposit in the Collateral Fund; and
- (3) third, from amounts on deposit in the Project Fund.

**Section 5.05 Investment of Special Funds**

(a) On the Closing Date, money on deposit in the Project Fund will be held by the Trustee uninvested until disbursed to the Borrower on the Closing Date in accordance with an approved Disbursement Request.

(b) Any amounts deposited in the Special Funds (including amounts, if any, remaining on deposit in the Project Fund after the Closing Date) shall be invested at all times in Eligible Investments as directed in writing by the Borrower except for de minimis periods of time necessary to effectuate disbursement of funds (which shall not exceed 365 days) pursuant to an interest payment, disbursement from the Project Fund or redemption of the Bonds, unless a confirmation from the Rating Agency (a “Rating Confirmation”) is obtained by the Borrower stating, in effect, that investing the amounts on deposit in the Special Funds other than in Eligible Investments will not result in a withdrawal, suspension, or downgrade of the rating then in effect on the Bonds.

(c) The Trustee is directed to purchase, on the Closing Date, a portfolio of Government Obligations in amounts and maturing on such dates as will provide sufficient money to pay interest on the Bonds when due or the purchase price of the Bonds on the Mandatory Tender Date, in

accordance with a Cash Flow Projection prepared by The Arbitrage Group, Inc. in connection with the initial issuance and delivery of the Bonds, with respect to amounts on deposit in the Interest Account of the Bond Fund, the Collateral Fund, and the Project Fund. The Trustee shall not sell or otherwise dispose of the Eligible Investments unless the Trustee has received a Cash Flow Projection as well as a Rating Confirmation stating, in effect, that such proposed change in the investments under this Indenture will not result in a withdrawal, suspension, or downgrade of the rating then in effect on the Bonds.

(d) After the Initial Mandatory Tender Date, the Trustee shall invest such amounts in obligations specified in subsection (b) of the definition of Eligible Investments or in an Eligible Investment, as otherwise directed by the Borrower.

(e) Any investment hereunder shall not bear a yield which is in excess of the yield on the Combined Bonds; provided that the Trustee has no duty to monitor the yield on any directed investment or any obligation to limit the yield on any investment the Borrower directs the Trustee to make. Investments permitted under this section may be purchased from the Trustee or from any of its affiliates. The Trustee shall have no liability whatsoever for any loss, fee, tax or other charge incurred in connection with any investment, reinvestment, sale or liquidation of an investment hereunder. The Trustee shall be entitled to rely on any written direction of the Borrower as to the suitability and legality of the directed investments. The Trustee shall have no responsibility whatsoever to determine whether any investments made pursuant to this Indenture are or continues to be Eligible Investments. Any deposit or investment directed by the Borrower shall constitute a certification by the Borrower to the Trustee that the assets so deposited or to be purchased pursuant to such directions are Eligible Investments. In no event shall the Trustee be deemed an investment manager or adviser in respect of any selection of investments hereunder.

(f) As long as no Event of Default (as defined in under Section 7.01 hereof) shall have occurred and be continuing, the Borrower shall have the right to designate the investments to be sold and to otherwise direct the Trustee in the sale or purchase of the investments or the conversion to cash of the investments made with the money in the Collateral Fund provided that the Trustee shall be entitled to conclusively assume the absence of any such Event of Default unless it has notice thereof; if there has been an Event of Default, the Trustee shall have said right. In the absence of such directions from the Borrower, the Trustee shall invest the proceeds of maturing investments in the Collateral Fund in Eligible Investments having a maturity date not longer than the earlier of 30 days from the date of purchase or the Maturity Date, as applicable; provided that if applicable, the Trustee shall invest in United States Treasury Obligations—State and Local Government Series (“SLGS”) that are ‘Time Deposit’ SLGS (and not in ‘Demand Deposit’ SLGS).

(g) The investments described in this Section 5.05 shall be made by the Trustee pursuant to the direction provided hereby and in accordance with the written direction of the Borrower to be provided on the Closing Date, which shall remain in effect unless and until further written direction is provided by the Borrower.

(h) Amounts, if any, on deposit in the Costs of Issuance Fund shall be invested at the direction of the Borrower in Eligible Investments until disbursed or returned to the Borrower pursuant to the provisions described under Section 5.13 hereof.

(i) The Issuer and the Borrower acknowledge that regulations of the Comptroller of the Currency grant the Issuer and the Borrower the right to receive brokerage confirmations of security transactions as they occur. The Issuer and the Borrower specifically waive such right to notification to the extent permitted by law and acknowledge that they will receive periodic transaction statements that will detail all investment transactions.

**Section 5.06 Money to be Held in Trust**

Except where money has been deposited with or paid to the Trustee pursuant to an instrument restricting their application to particular Bonds, all money required or permitted to be deposited with or paid to the Trustee or the Paying Agent under any provision of this Indenture or the Note, and any investments thereof, shall be held by the Trustee or the Paying Agent in trust. Except for money held by the Trustee pursuant to Section 5.09 hereof, all money described in the preceding sentence held by the Trustee or the Paying Agent shall be subject to the lien hereof while so held.

**Section 5.07 Nonpresentment of Bonds**

In the event that any Bond shall not be presented for payment when the principal thereof becomes due, or a check or draft for interest is uncashed, if money sufficient to pay the principal then due of that Bond or of such check or draft shall have been made available to the Trustee for the benefit of its Holder, all liability of the Issuer to that Holder for such payment of the principal then due of the Bond or of such check or draft thereupon shall cease and be discharged completely. Thereupon, it shall be the duty of the Trustee to hold such money, without liability for interest thereon, in a separate account in the Bond Fund for the exclusive benefit of the Holder, who shall be restricted thereafter exclusively to such money for any claim of whatever nature on its part under this Indenture or on, or with respect to, the principal then due of that Bond or of such check or draft. The Trustee shall notify the Borrower in writing of any Bond that has not been presented for payment when the principal thereof becomes due.

Any of such money which shall be so held by the Trustee, and which remains unclaimed by the Holder of a Bond not presented for payment or check or draft not cashed for a period of two years after the due date thereof, shall be paid to the Borrower free of any trust or lien, upon a request of the Borrower in writing executed by an Authorized Borrower Representative. Thereafter, the Holder of that Bond shall look only to the Borrower for payment and then only to the amounts so received by the Borrower without any interest thereon, and the Trustee shall not have any responsibility with respect to such money.

**Section 5.08 Repayment to the Borrower from the Bond Fund**

Except as provided in Section 5.09 hereof, any amounts remaining in the Bond Fund (i) after all of the Outstanding Bonds shall be deemed paid and discharged under the provisions of this Indenture, and (ii) after payment of all fees, charges and expenses of the Trustee, the Registrar, the Paying Agents and the Issuer, and of all other amounts required to be paid under this Indenture, the Loan Agreement, the Regulatory Agreement and the Note, shall be paid to the Borrower to the extent that those amounts are in excess of those necessary to effect the payment and discharge of the Outstanding Bonds.

### **Section 5.09     Rebate Fund**

Any provision hereof to the contrary notwithstanding, amounts credited to the Rebate Fund shall be free and clear of any lien hereunder.

The Trustee shall furnish to the Borrower all information reasonably requested by the Borrower or its Rebate Analyst (as defined below) with respect to the Bonds and investments of the funds and accounts maintained by the Trustee hereunder. The Trustee shall make deposits to and disbursements from the Rebate Fund (including rebate payments to the United States required to be made by the Tax Certificate), as well as investments of the amounts therein, in accordance with the written directions received from the Borrower and the Investor Limited Partner pursuant to the Tax Certificate.

All amounts on deposit at any time in the Rebate Fund shall be held by the Trustee in trust to the extent required to pay rebatable arbitrage to the United States of America. If required by Bond Counsel, a firm of lawyers, accountants or consultants selected by the Borrower (the “Rebate Analyst”) will calculate the rebate amount as provided in the Tax Certificate within 60 days after the end of each bond year during which any Bonds remaining outstanding (or any other date specified by the Rebate Analyst), and within 60 days after the date of redemption of the last maturity constituting a portion of the Bonds, the Rebate Analyst shall calculate the rebate amount for the immediately preceding bond year. A copy of each rebate amount calculation shall be provided to the Trustee. The Trustee may conclusively rely upon the calculation made by the Rebate Analyst and shall not be liable or responsible therefor. All amounts in the Rebate Fund shall be used and withdrawn by the Trustee at the written instruction of the Rebate Analyst or the Borrower as required above solely for the purposes set forth in this section. The Trustee shall withdraw money from the Rebate Fund and remit all required rebate installments and a final rebate payment to the United States. Neither the Trustee nor the Issuer shall have any obligation to pay any amounts required to be rebated pursuant to this section and the Tax Certificate, other than from money held in the Rebate Fund as provided in this Indenture or from other moneys provided to it by the Issuer.

The Trustee shall not be responsible for any determination or calculation concerning arbitrage rebate with respect to the Bonds, or for determining whether the yield on any investments made in accordance with this Indenture would cause, or whether any other facts exist which would cause, any of the Bonds to become arbitrage bonds under Section 148 of the Code.

### **Section 5.10     Valuation**

For the purpose of determining the amount on deposit to the credit of any fund or account, the value of obligations in which money in such fund or account shall have been invested shall be computed at the then market value thereof.

The Eligible Investments shall be valued by the Trustee at any time requested by the Borrower on reasonable notice to the Trustee (which period of notice may be waived or reduced by the Trustee); provided, however, that the Trustee shall not be required to value the Eligible Investments more than once in any calendar month.

**Section 5.11 Completion of the Project**

The completion of the Project and payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee of the Completion Certificate required by Section 3.7 of the Loan Agreement. As soon as practicable after the filing with the Trustee of the Completion Certificate, any balance remaining in the Project Fund (other than the amounts retained by the Trustee as described in the Completion Certificate) shall be deposited or applied in accordance with the direction of the Borrower executed by an Authorized Borrower Representative pursuant to Section 3.4 of the Loan Agreement.

**Section 5.12 Collateral Fund**

There shall be deposited in the Collateral Fund Available Money in such amounts as may be necessary to allow the Trustee to transfer funds from the Project Fund, pursuant to Section 5.03 hereof, upon the Trustee's receipt of a disbursement request from the Borrower. Money in the Collateral Fund shall be invested as directed by the Borrower in Eligible Investments.

The Collateral Fund shall only be used and applied for, and irrevocably committed to, the payment of (i) the Bond Debt Service Charges on the Bonds which are due and payable on any Interest Payment Date, Maturity Date, Mandatory Tender Date with respect to Bonds that are not remarketed, or on any date the Bonds are called for redemption prior to maturity, (ii) the Bond Debt Service Charges on the Bonds as and when due at any other Bond Payment Date, and (iii) the purchase price of the Bonds on the Mandatory Tender Date, to the extent amounts on deposit in the Remarketing Proceeds Account and the Interest Account of the Bond Fund are insufficient therefor. Any interest earnings on the Collateral Fund shall be credited to the Interest Account of the Bond Fund.

**Section 5.13 Costs of Issuance Fund**

The Trustee shall use money on deposit to the credit of the Costs of Issuance Fund to pay the costs of issuance of the Bonds on the Closing Date or as soon as practicable thereafter in accordance with written instructions to be given to the Trustee by the Issuer, as set forth in a certificate of the Issuer delivered to the Trustee on the Closing Date or as otherwise directed by the Issuer, upon delivery to the Trustee of appropriate invoices for such expenses. Amounts on deposit in the Costs of Issuance Fund shall also be used by the Trustee to pay the Remarketing Expenses, as directed in writing by the Borrower on the Remarketing Date. Investment earnings on amounts on deposit in the Costs of Issuance Fund shall be retained in such fund. Amounts remaining on deposit in the Costs of Issuance Fund 60 days after the Closing Date, other than amounts deposited pursuant to Section 4.05(d)(iv), shall be deposited to the Bond Fund. Amounts deposited in the Costs of Issuance Fund pursuant to Section 4.05(d)(iv) and remaining on deposit therein 30 days after the Remarketing Date, shall be deposited to the Bond Fund. Upon such final disbursement, the Trustee shall close the Costs of Issuance Fund.

**Section 5.14 Allocation and Reallocation of Government Obligations Deposited to the Collateral Fund and the Project Fund**

On the Closing Date, the Trustee shall allocate ownership of the Government Obligations acquired pursuant to Section 5.05 hereof and deposited for the benefit of the Project Fund and the

Collateral Fund as follows: The Trustee shall allocate to the Collateral Fund a percentage of such Government Obligations equal to the amount of Available Money presented to the Trustee for deposit to the Collateral Fund on the Closing Date divided by the aggregate Outstanding principal amount of the Bonds and multiplied by 100 (the “Initial Collateral Fund Percentage”) and the remainder (i.e., 100% minus the Initial Collateral Fund Percentage, referred to as the “Initial Project Fund Percentage”) shall be allocated to the Project Fund. On each subsequent month when additional Available Money is presented to the Trustee for deposit to the Collateral Fund (the “Subsequent Allocation Date”), the dollar amount of such Available Money shall be added to all prior Available Money so deposited, and the percentage of such Government Obligations allocated to the Collateral Fund shall be adjusted to that percentage equal to the aggregate Available Money so deposited through such date divided by the aggregate Outstanding principal amount of the Bonds and multiplied by 100 (the “Collateral Fund Percentage”) and the remainder (i.e., 100% minus the Collateral Fund Percentage, referred to as the “Project Fund Percentage”) shall be allocated to the Project Fund. On each Subsequent Allocation Date, the Trustee shall be deemed to have liquidated that portion of the Governmental Obligations allocated to the Project Fund and purchased equivalent Governmental Obligations to be allocated to the Collateral Fund.

## ARTICLE VI

### THE TRUSTEE, REGISTRAR, PAYING AGENTS AND AUTHENTICATING AGENTS

#### Section 6.01 Trustee's Acceptance and Responsibilities

The Trustee accepts the trusts imposed upon it by this Indenture, and agrees to observe and perform those trusts, but only upon and subject to the terms and conditions set forth in this Article, to all of which the parties hereto and the Holders agree.

(a) Prior to the occurrence of a default or an Event of Default (as defined in Section 7.01 hereof) of which the Responsible Officer has been notified, as provided in paragraph (f) of Section 6.02 hereof, or of which by that paragraph the Trustee is deemed to have notice, and after the cure or waiver of all defaults or Events of Default which may have occurred,

(i) the Trustee undertakes to perform only those duties and obligations which are set forth specifically in this Indenture, and no duties or obligations shall be implied to the Trustee;

(ii) in the absence of bad faith, willful misconduct, or gross negligence on its part, the Trustee may rely conclusively, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture.

(b) In case a default or an Event of Default has occurred and is continuing hereunder (of which the Responsible Officer has been notified, or is deemed to have notice), the Trustee shall exercise those rights and powers vested in it by this Indenture and shall use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs. The Trustee shall not be liable for any action taken or omitted by it in the performance of its duties hereunder except for its own negligence or willful misconduct.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that

(i) this Subsection shall not be construed to affect the limitation of the Trustee's duties and obligations provided in subparagraph (a)(i) of this Section or the Trustee's right to rely on the truth of statements and the correctness of opinions as provided in subparagraph (a)(ii) of this Section;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by any one of its officers, unless it shall be established that the Trustee was grossly negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than

a majority in principal amount of the Bonds then outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(v) In no event shall the Trustee be liable for incidental, special, indirect, consequential or punitive damages or penalties (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such damages or penalty regardless of the form of action.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 6.01.

#### **Section 6.02 Certain Rights and Obligations of the Trustee**

Except as otherwise provided in Section 6.01 hereof:

(a) The Trustee (i) may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees (but shall be answerable therefor only in accordance with the standard specified above), (ii) shall be entitled to the advice of counsel concerning all matters of trusts hereof and duties hereunder, and (iii) may pay reasonable compensation in all cases to all of those attorneys, agents, receivers and employees reasonably employed by it in connection with the trusts hereof (at its own expense or, if such attorneys, agents and receivers are reasonably employed by the Trustee to perform Extraordinary Services, at the expense of the Borrower as provided in Section 6.03 hereof). The Trustee may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for the Issuer or the Borrower) approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action taken or omitted to be taken in good faith in reliance upon that opinion or advice.

(b) The Trustee shall not be responsible for:

(i) the validity, priority, recording, re-recording, filing or re-filing of this Indenture or any Supplemental Indenture or the Regulatory Agreement,

(ii) any instrument or document of further assurance or collateral assignment,

(iii) insurance of the Project,

(iv) the validity of the execution by the Issuer of this Indenture, any Supplemental Indenture or instruments or documents of further assurance,

(v) the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby,

(vi) the value of or title to the Project,

except that, in the event that the Trustee enters into possession of a part or all of the Project pursuant to any provision of the Regulatory Agreement or any other instrument or document collateral thereto, the Trustee shall use due diligence in preserving that property. The Trustee shall not be bound to ascertain or inquire as to the observance or performance of any covenants, agreements or obligations on the part of the Issuer or the Borrower under the Loan Agreement except as set forth hereinafter; but the Trustee may require of the Issuer or the Borrower full information and advice as to the observance or performance of those covenants, agreements and obligations. Except as otherwise provided in Section 7.04 hereof, the Trustee shall have no obligation to observe or perform any of the duties of the Issuer under the Loan Agreement.

(c) The Trustee shall not be accountable for the application by the Borrower or any other Person of the proceeds of any Bonds authenticated or delivered hereunder.

(d) The Trustee shall be protected, in the absence of bad faith on its part, in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document reasonably believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons. Any action taken by the Trustee pursuant to this Indenture upon the request, authority or consent of any Person who is the Holder of any Bonds at the time of making the request or giving the authority or consent, shall be conclusive and binding upon all future Holders of the same Bond and of Bonds issued in exchange therefor or in place thereof.

(e) As to the existence or nonexistence of any fact for which the Issuer or the Borrower may be responsible or as to the sufficiency or validity of any instrument, document, report, paper or proceeding, the Trustee, in the absence of bad faith on its part, shall be entitled to rely upon a certificate signed on behalf of the Issuer or Borrower, as appropriate, by an authorized officer or representative thereof as sufficient evidence of the facts recited therein. Prior to the occurrence of a default or Event of Default hereunder of which the Responsible Officer has been notified, as provided in paragraph (f) of this Section, or of which by that paragraph the Responsible Officer is deemed to have notice, the Trustee may accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient; provided, that the Trustee may require and obtain any further evidence which it deems to be necessary or advisable; and, provided further, that the Trustee shall not be bound to secure any such further evidence.

(f) The Trustee shall not be required to take notice, and shall not be deemed to have notice, of any default or Event of Default hereunder, except Events of Default described in paragraphs (a), (b) and (d) (but only with respect to paragraph (a) of Section

7.1 of the Loan Agreement) of Section 7.01 hereof, unless the Responsible Officer shall be notified specifically of the default or Event of Default in a written instrument or document delivered to it by the Issuer or by the Holders of at least 10% of the aggregate principal amount of Bonds then outstanding. In the absence of delivery of a notice satisfying those requirements, the Trustee may assume conclusively that there is no default or Event of Default, except as noted above.

(g) The Trustee shall not be required to give any bond or surety with respect to the execution of these trusts and powers or otherwise in respect of the premises.

(h) Notwithstanding anything contained elsewhere in this Indenture, the Trustee may demand any showings, certificates, reports, opinions, appraisals and other information, and any corporate action and evidence thereof, in addition to that required by the terms hereof, as a condition to the authentication of any Bonds or the taking of any action whatsoever within the purview of this Indenture, if the Trustee deems it to be desirable for the purpose of establishing the right of any Person to the taking of any other action by the Trustee; provided, that the Trustee shall not be required to make that demand.

(i) Before taking action hereunder pursuant to Section 6.04 or Article VII hereof (with the exception of any action required to be taken under Section 7.02 hereof), the Trustee may require that a satisfactory indemnity bond be furnished to it for the reimbursement of all expenses which it may incur and to protect it against all liability by reason of any action so taken, except liability which is adjudicated to have resulted from its negligence or willful misconduct. The Trustee may take action without that indemnity, and in that case, the Borrower shall reimburse the Trustee for all of the Trustee's expenses pursuant to Section 6.03 hereof.

(j) Unless otherwise provided herein, all money received by the Trustee under this Indenture shall be held in trust for the purposes for which such money was received, until such money is used, applied or invested as provided herein; provided, that such money need not be segregated from other money, except to the extent required by this Indenture or by law. Absent written direction provided to the Trustee pursuant to Section 5.05 hereof, the Trustee shall not be responsible or liable for keeping money held by it hereunder invested in any particular investment, and the Trustee shall not have any liability for interest on any money received hereunder, except to the extent expressly provided herein.

(k) Any resolution by the City Council of the Issuer, and any opinions, certificates and other instruments and documents for which provision is made in this Indenture, may be accepted by the Trustee, in the absence of bad faith on its part, as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee for its actions taken hereunder.

(l) The Trustee shall be entitled to file proofs of claim in bankruptcy at the direction of the Holders of at least 25% in aggregate principal amount of Bonds outstanding. Trustee fees and expenses are intended to constitute administrative expenses in bankruptcy.

(m) The duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture. No implied covenants or obligations shall be read into this Indenture against the Trustee. Notwithstanding any provision herein, the Trustee shall have no duty or obligation to the Borrower except as may be expressly set forth in this Indenture.

(n) The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising or caused, directly or indirectly by circumstances beyond its reasonable control including, without limitation, acts of God; earthquakes; fire; flood; hurricanes or other storms; wars; terrorism; similar military disturbances; sabotage; epidemic; pandemic; riots; interruptions; loss or malfunctions of utilities, communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that the Trustee shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under any such circumstances.

(o) Notwithstanding anything contained herein to the contrary, upon the occurrence and continuance of an Event of Default, before taking any action which may subject the Trustee to liability under any environmental law, statute, regulation or similar requirement relating to the environment, the Trustee may require that a satisfactory indemnity bond, indemnity or environmental impairment insurance be furnished for the payment or reimbursement of all costs and expenses to which it may be put (including reasonable attorney's fees, costs and expenses) and to protect it against all liability resulting from any claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability) and costs and expenses which may result from such foreclosure or other action (including reasonable attorney's fees, costs and expenses).

(p) The Trustee may consult with counsel and the written advise of such counsel or any Option of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

### **Section 6.03 Fees, Charges and Expenses of Trustee, Registrar, Paying Agents and Authenticating Agents**

The Trustee, Registrar, Paying Agents and Authenticating Agents shall be entitled to payment or reimbursement by the Borrower, as provided in the Loan Agreement, for customary fees for their respective Ordinary Services rendered hereunder and for all advances, counsel fees and other Ordinary Expenses reasonably and necessarily paid or incurred by them in connection with the provision of Ordinary Services. For purposes hereof, fees for Ordinary Services provided for by their respective standard fee schedule shall be considered customary. Notwithstanding anything in this Indenture or the other Loan Documents to the contrary, fees of the Trustee, Registrar, Paying Agents and Authenticating Agents for Ordinary Services and any fees for services of the Dissemination Agent under the Continuing Disclosure Agreement shall be paid directly by the Borrower to the Trustee as provided in Section 4.2(c) of the Loan Agreement. In

the event that it should become necessary for any of them to perform Extraordinary Services, they shall be entitled to customary extra compensation therefor and to reimbursement for reasonable and necessary Extraordinary Expenses incurred in connection therewith. Unless and until such time as the Trustee resigns or is replaced, and a successor Trustee is appointed pursuant to Section 6.09 hereunder, the Trustee shall continue to perform its duties hereunder notwithstanding the Borrower's failure to timely pay such fees.

Without creating a default or an Event of Default hereunder, however, the Borrower may contest in good faith the necessity for any Extraordinary Service and Extraordinary Expense and the amount of any fee, charge or expense except Ordinary Expenses.

The Trustee, Registrar, Paying Agents and Authenticating Agents shall not be entitled to compensation or reimbursement for Extraordinary Services or Extraordinary Expenses occasioned by their negligence or willful misconduct. The customary fees for their respective Ordinary Services and charges of the foregoing shall be entitled to payment and reimbursement only from (i) the Additional Payments made by the Borrower pursuant to the Loan Agreement, or (ii) from other money available therefor. Any amounts payable to the Trustee, the Registrar, the Paying Agents or the Authenticating Agents pursuant to this Section 6.03 shall be payable upon receipt of a detailed invoice from the Trustee, Registrar, Paying Agents or Authenticating Agents, as applicable, and shall bear interest beginning 30 days following the provision of the respective invoice to the Borrower at the Interest Rate for Advances.

#### **Section 6.04     Intervention by Trustee**

The Trustee may intervene on behalf of the Holders, and shall intervene if requested to do so in writing by the Holders of at least 25% of the aggregate principal amount of Bonds then outstanding, in any judicial proceeding to which the Issuer or the Borrower is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of Holders of the Bonds. The rights and obligations of the Trustee under this Section are subject to the approval of that intervention by a court of competent jurisdiction. The Trustee may require that a satisfactory indemnity bond be provided to it in accordance with Sections 6.01 and 6.02 hereof before it takes action hereunder.

#### **Section 6.05     Successor Trustee**

Anything herein to the contrary notwithstanding,

(a) any corporation or association (i) into which the Trustee may be converted or merged, (ii) with which the Trustee or any successor to it may be consolidated, or (iii) to which it may sell or transfer its corporate trust assets and corporate trust business as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, merger, consolidation, sale or transfer, ipso facto, shall be and become successor Trustee hereunder and shall be vested with all of the title to the whole property or Trust Estate hereunder; and

(b) that corporation or association shall be vested further, as was its predecessor, with each and every trust, property, remedy, power, right, duty, obligation,

discretion, privilege, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by, vested in or conveyed to the Trustee, without the execution or filing of any instrument or document or any further act on the part of any of the parties hereto.

Any successor Trustee, however, (i) shall be a trust company or a bank having the powers of a trust company, (ii) shall be in good standing within the State, (iii) shall be duly authorized to exercise trust powers within the State, (iv) shall have a reported capital, surplus and retained earnings of not less than \$100,000,000, and (v) shall have at least a Minimum Trustee Rating.

#### **Section 6.06 Appointment of Co-Trustee**

It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including without limitation, the laws of the State) denying or restricting the right of banks or trust companies to transact business as trustees in that jurisdiction. It is recognized that, (a) if there is litigation under this Indenture or other instruments or documents relating to the Bonds and the Project, and in particular, in case of the enforcement hereof or thereof upon a default or an Event of Default, or (b) if the Trustee should deem that, by reason of any present or future law of any jurisdiction, it may not (i) exercise any of the powers, rights or remedies granted herein to the Trustee, (ii) hold title to the properties, in trust, as granted herein, or (iii) take any action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an individual or additional institution as a co-Trustee. The following provisions of this Section are adapted to these ends.

In the event that the Trustee appoints an individual or additional institution as a co-Trustee, each and every trust, property, remedy, power, right, duty, obligation, discretion, privilege, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by, vested in or conveyed to the Trustee shall be exercisable by, vest in and be conveyed to that co-Trustee, but only to the extent necessary for it to be so vested and conveyed and to enable that co-Trustee to exercise it. Every covenant, agreement and obligation necessary to the exercise thereof by that co-Trustee shall run to and be enforceable by it.

Should any instrument or document in writing from the Issuer reasonably be required by the co-Trustee so appointed by the Trustee for vesting and conveying more fully and certainly in and to that co-Trustee those trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens, that instrument or document shall be executed, acknowledged and delivered, but not prepared, by the Issuer. In case any co-Trustee or a successor to it shall die, become incapable of acting, resign or be removed, all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens of the co-Trustee shall be exercised by, vest in and be conveyed to the Trustee, to the extent permitted by law, until the appointment of a successor to the co-Trustee.

The total compensation of the Trustee and any co-Trustee or separate trustee shall be as, and may not exceed the amounts, provided in Section 6.03 hereof.

**Section 6.07     Resignation by the Trustee**

The Trustee may resign at any time from the trusts created hereby by giving written notice of the resignation to the Issuer, the Borrower, the Investor Limited Partner, the Registrar, the Paying Agents and Authenticating Agents, and by mailing written notice of the resignation to the Holders as their names and addresses appear on the Register at the close of business fifteen (15) days prior to the mailing. Notwithstanding the foregoing, if the Trustee no longer has a Minimum Trustee Rating, it shall resign within 60 calendar days of the withdrawal or suspension of a former Minimum Trustee Rating or other event giving rise to its failure to maintain a Minimum Trustee Rating. The resignation shall take effect upon the appointment of a successor Trustee as provided for in Section 6.09 of this Indenture or an order of a court of competent jurisdiction allowing the Trustee to resign.

**Section 6.08     Removal of the Trustee**

The Trustee may be removed at any time upon 30 days' written notice by an instrument or document or concurrent instruments or documents in writing delivered to the Trustee, with copies thereof mailed to the Issuer, the Registrar, the Paying Agents and Authenticating Agents and the Borrower, and signed by or on behalf of the Majority of the Holders of the Bonds.

The Trustee also may be removed at any time upon 30 days' written notice for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provision of this Indenture with respect to the duties and obligations of the Trustee by any court of competent jurisdiction upon the application of the Issuer or the Holders of not less than 25% in aggregate principal amount of the Bonds then outstanding under this Indenture.

The removal of the Trustee under this Section 6.08 shall take effect upon the appointment of a successor Trustee as provided for in Section 6.09 of this Indenture.

**Section 6.09     Appointment of Successor Trustee**

If (i) the Trustee shall resign, shall be removed, shall be dissolved, or shall become otherwise incapable of acting hereunder, (ii) the Trustee shall be taken under the control of any public officer or officers, or (iii) a receiver shall be appointed for the Trustee by a court, then a successor Trustee shall be appointed by the Issuer; provided, that if a successor Trustee is not so appointed within 30 days after (a) a notice of resignation or an instrument or document of removal is received by the Issuer, as provided in Sections 6.07 and 6.08 hereof, respectively, or (b) the Trustee is dissolved, taken under control, becomes otherwise incapable of acting or a receiver is appointed, in each case, as provided above, then, but only so long as the Issuer shall not have appointed a successor Trustee, the Holders of a majority in aggregate principal amount of Bonds then outstanding may designate a successor Trustee by an instrument or document or concurrent instruments or documents in writing signed by or on behalf of those Holders. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section, the Holder of any Bond outstanding hereunder or any retiring Trustee may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

Every successor Trustee appointed pursuant to this Section (i) shall be a trust company or a bank having the powers of a trust company (ii) shall be in good standing within the State, (iii) shall be duly authorized to exercise trust powers within the State, (iv) shall have a reported capital, surplus and retained earnings of not less than \$100,000,000, (v) shall be willing to accept the trusteeship under the terms and conditions of this Indenture, and (vi) shall have a Minimum Trustee Rating.

Every successor Trustee appointed hereunder shall execute and acknowledge, and shall deliver to its predecessor, the Issuer and the Borrower an instrument or document in writing accepting the appointment. Thereupon, without any further act, the successor shall become vested with all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens of its predecessor. Upon the written request of its successor, the Issuer or the Borrower, and payment of all fees and expenses owed to it, the predecessor Trustee (i) shall execute and deliver an instrument or document transferring to its successor all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens of the predecessor Trustee hereunder, and (ii) shall take any other action necessary to duly assign, transfer and deliver to its successor all property (including without limitation, all securities and money) held by it as Trustee. Should any instrument or document in writing from the Issuer be requested by any successor Trustee for vesting and conveying more fully and certainly in and to that successor the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens vested or conveyed or intended to be vested or conveyed hereby in or to the predecessor Trustee, the Issuer shall execute, acknowledge and deliver that instrument or document.

In the event of a change in the Trustee, the predecessor Trustee shall cease to be custodian of any money which it may hold pursuant to this Indenture and shall cease to be Registrar, Authenticating Agent and a Paying Agent for any of the Bonds, to the extent it served in any of those capacities.

#### **Section 6.10 Adoption of Authentication**

In case any of the Bonds shall have been authenticated, but shall not have been delivered, any successor Trustee, Registrar or Authenticating Agent may adopt the certificate of authentication of any predecessor Trustee, Registrar or Authenticating Agent and may deliver those Bonds so authenticated as provided herein. In case any Bonds shall not have been authenticated, any successor Trustee, Registrar or Authenticating Agent may authenticate those Bonds in its own name as successor Trustee. In all cases, the certificate of authentication shall have the same force and effect as provided in the Bonds or in this Indenture with respect to the certificate of authentication of the predecessor Trustee, Registrar or Authenticating Agent.

## **Section 6.11 Registrars**

(a) Succession. Anything herein to the contrary notwithstanding, any corporation or association (i) into which a Registrar may be converted or merged, (ii) with which a Registrar or any successor to it may be consolidated, or (iii) to which it may sell or transfer its assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, merger, consolidation, sale or transfer, ipso facto, shall be and become successor Registrar to that Registrar hereunder and shall be vested with each and every power, right, duty, obligation, discretion and privilege expressed or intended by this Indenture to be exercised by or vested in the predecessor Registrar, without the execution or filing of any instrument or document or any further act on the part of any of the parties hereto.

(b) Resignation. A Registrar may resign at any time by giving written notice of its resignation to the Issuer, the Borrower, the Trustee and to each Paying Agent and Authenticating Agent for the Bonds, at least 60 days before the resignation is to take effect. The resignation shall take effect immediately, however, upon the appointment of a successor Registrar, if the successor Registrar is appointed and accepts that appointment before the time stated in the notice.

(c) Removal. The Registrar may be removed at any time upon 30 days' written notice by an instrument or document or concurrent instruments or documents in writing delivered to the Registrar, with copies thereof mailed to the Issuer, the Trustee and the Borrower, and signed by or on behalf of the Holders of not less than a majority in aggregate principal amount of the Bonds then outstanding.

(d) Appointment of Successors. If (i) a Registrar shall resign, shall be removed, shall be dissolved, or shall become otherwise completely incapable of acting hereunder, (ii) a Registrar shall be taken under the control of any public officer or officers, (iii) a receiver shall be appointed for a Registrar by a court, or (iv) a Registrar shall have an order for relief entered in any case commenced by or against it under the federal bankruptcy laws or commence a proceeding under any federal or state bankruptcy, insolvency, reorganization or similar law, or have such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed and unstayed for 90 days, then a successor Registrar shall be appointed by the Trustee, with the written consent of the Borrower; provided, that if a successor Registrar is not so appointed within 10 days after (a) a notice of resignation or an instrument or document of removal is received by the Trustee, as provided above, or (b) the Registrar is dissolved, taken under control, becomes otherwise incapable of acting or a receiver is appointed, in each case, as provided above, then, if the Trustee shall not have appointed a successor Registrar, the Trustee shall be and become the Registrar.

Every successor Registrar appointed hereunder shall execute and acknowledge, and shall deliver to its predecessor, the Issuer, the Trustee and the Borrower, an instrument or document in writing accepting the appointment. Thereupon, without any further act, the successor shall become vested with all of the properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, titles and interests of its predecessor. Upon the written request of its successor, the Issuer or the Borrower, a predecessor Registrar (i) shall execute and deliver an instrument or document transferring to its successor all of the properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands,

causes of action, immunities, titles and interests of it as predecessor Registrar hereunder, and (ii) shall take any other action necessary to duly assign, transfer and deliver to its successor all property and records (including without limitation, the Register and any cancelled Bonds) held by it as Registrar. Should any instrument or document in writing from the Issuer be requested by any successor Registrar for vesting and conveying more fully and certainly in and to that successor the properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, titles and interests vested or conveyed or intended to be vested or conveyed hereby in or to a predecessor Registrar, the Issuer shall execute, acknowledge and deliver that instrument or document.

The Trustee shall cause the Borrower to pay pursuant to Section 4.2 of the Loan Agreement, to any Registrar customary compensation for its services from time to time, as authorized, but subject to the limitations set forth, in Section 6.03 hereof. The provisions of Sections 3.05, 3.06, 3.07 and 6.02(d) hereof shall be applicable to the Registrar.

### **Section 6.12     Designation and Succession of Paying Agents**

The Trustee shall be a Paying Agent for the Bonds, and, with the consent of the Issuer, the Trustee may appoint a Paying Agent or Agents with power to act on its behalf and subject to its direction in the payment of Bond Debt Service Charges on the Bonds. It is the responsibility of the Trustee to establish the duties and responsibilities of the Paying Agent for the purposes of this Indenture, to the extent not specified herein.

Any corporation or association with or into which the Paying Agent may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, consolidation or conversion to which the Paying Agent shall be a party, or any corporation or association succeeding to the trust business of the Paying Agent, shall be the successor of that Paying Agent hereunder, if that successor corporation or association is otherwise eligible hereunder, without the execution or filing of any paper or any further act on the part of the parties hereto or the Paying Agent or that successor corporation or association.

The Paying Agent may at any time resign by giving written notice of resignation to the Trustee, to the Registrar and to the Borrower. The Trustee may at any time terminate the agency of the Paying Agent by giving written notice of termination to such Paying Agent, to the Registrar and to the Borrower. Upon receiving such a notice of resignation or upon such a termination, or in case at any time the Paying Agent shall cease to be eligible under this Section, the Trustee may appoint a successor Paying Agent. The Trustee shall give written notice of appointment of a successor Paying Agent to the Borrower, the Issuer and the Registrar and shall mail, within ten (10) days after that appointment, notice thereof to all Holders as their names and addresses appear on the Register on the date of that appointment.

The Trustee shall cause the Borrower to pay pursuant to Section 4.2 of the Loan Agreement, to the Paying Agent from time to time customary compensation as authorized, but subject to the limitations set forth, in Section 6.03 hereof for its services.

The provisions of Section 3.05, 3.07 and Subsection 6.02(d) shall be applicable to the Paying Agent.

**Section 6.13     Designation and Succession of Authenticating Agents**

The Trustee may appoint an authenticating agent or agents (each referred to herein as an “Authenticating Agent”), in addition to the Registrar, with power to act on its behalf and subject to its direction in the authentication and delivery of Bonds in connection with transfers and exchanges under Sections 3.06 and 4.02 hereof. For all purposes of this Indenture, the authentication and delivery of Bonds by an Authenticating Agent pursuant to this Section shall be deemed to be authentication and delivery of those Bonds “by the Trustee”.

Any corporation or association with or into which any Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, consolidation or conversion to which any Authenticating Agent shall be a party, or any corporation or association succeeding to the trust business of any Authenticating Agent, shall be the successor of that Authenticating Agent hereunder, if that successor corporation or association is otherwise eligible hereunder, without the execution or filing of any paper or any further act on the part of the parties hereto or the Authenticating Agent or such successor corporation.

Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee, to the Registrar and to the Borrower. The Trustee may at any time terminate the agency of any Authenticating Agent by giving written notice of termination to such Authenticating Agent, to the Registrar and to the Borrower. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any Authenticating Agent shall cease to be eligible under this Section, the Trustee may appoint a successor Authenticating Agent. The Trustee shall give written notice of appointment of a successor Authenticating Agent to the Borrower, the Issuer and the Registrar and shall mail, within ten (10) days after that appointment, notice thereof to all Holders as their names and addresses appear on the Register on the date of that appointment.

The Trustee shall cause the Borrower to pay pursuant to Section 4.2 of the Loan Agreement, to any Authenticating Agent from time to time customary compensation for its services.

The provisions of Section 3.05 and Subsections 6.02(b), (c), (d), (h) and (i) shall be applicable to any Authenticating Agent.

**Section 6.14     Dealing in Bonds**

The Trustee, a Registrar, a Paying Agent and an Authenticating Agent, their Affiliates, and any directors, officers, employees or agents thereof, in good faith, may become the owners of Bonds secured hereby with the same rights which it or they would have hereunder if the Trustee, the Registrar, Paying Agents and Authenticating Agents did not serve in those capacities.

**Section 6.15 Representations, Agreement and Covenants of Trustee**

The Trustee hereby represents that it is a national banking association duly organized and validly existing under the laws of the United States of America, in good standing and duly authorized to exercise corporate trust powers in the State, and that it has an unimpaired reported capital, surplus and retained earnings of not less than \$100,000,000. The Trustee covenants that it will take such action, if any, as is necessary to remain in good standing and duly authorized to exercise corporate trust powers in the State, and that it will maintain an unimpaired reported capital, surplus and retained earnings of not less than \$100,000,000. The Trustee accepts and agrees to observe and perform the duties and obligations of the Trustee to which reference is made in any other instrument or document providing security for any of the Bonds.

**Section 6.16 Reserved**

**Section 6.17 Interpleader**

In the event of a dispute between any of the parties hereto with respect to the disposition of any funds held by the Trustee hereunder, or the Trustee receives conflicting demands made upon the Trustee with respect to the Trustee's duties hereunder or any other document related to the Bonds, the Trustee shall be entitled to file a suit in interpleader in a court of competent jurisdiction seeking to require the parties to interplead and litigate in such court their several claims and rights among themselves. Upon the filing of such a suit and the deposit of the applicable funds to such court, the Trustee will ipso facto be fully released and discharged from all obligations to further perform any and all duties imposed hereunder or any other document related to the Bonds regarding such matter and/or such funds that are the subject of such interpleader suit. In the event that the Trustee remains as Trustee under this Indenture and receives a court order, directive or other request regarding the interpleader suit, the Trustee shall be entitled to rely upon such instruction without incurring any obligation or liability and the parties hereto release, hold harmless and indemnify the Trustee for any obligation or liability for so relying on such court instruction.

**Section 6.18 Survival of Certain Provisions**

The provisions of Sections 6.01 through 6.18 of this Indenture shall survive the release, discharge and satisfaction of this Indenture.

**Section 6.19 Concerning the Remarketing Agent**

The Remarketing Agent identified in Section 1.01 hereof shall serve as the Remarketing Agent for the Bonds. The Remarketing Agent shall designate to the Trustee its designated office and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Issuer, the Borrower and the Trustee. In addition, the Remarketing Agent will agree particularly to:

(a) keep such records relating to its computations of interest rates for the Bonds as shall be consistent with prudent industry practice and to make such records available for inspection by the Issuer, the Trustee and the Borrower at all reasonable times; and

- (b) perform all of its functions and duties under this Indenture.

The Remarketing Agent shall be entitled to advice of legal counsel on any matter relating to the Remarketing Agent's obligations hereunder and shall be entitled to act upon the opinion of such counsel in the exercise of reasonable care in fulfilling such obligations.

The Remarketing Agent shall be entitled to appoint additional co-Remarketing Agents to assist in the performance of the Remarketing Agent's obligations under this Indenture, and any such appointment shall be effective without any action by the Issuer or the Borrower being necessary; provided that any such co-Remarketing Agent, shall have a capitalization of at least \$15,000,000, or shall have a line of credit with a commercial bank in the amount of at least \$15,000,000, shall be in conformity with all standards and requirements of the Municipal Securities Rulemaking Board and the Securities and Exchange Commission, and shall be authorized by law to perform all the duties imposed upon it by this Indenture. The Remarketing Agent shall take responsibility for any co-Remarketing Agent it appoints.

**Section 6.20 Qualification of Remarketing Agent**

The Remarketing Agent shall be a member in good standing of the Financial Industry Regulatory Authority having a capitalization of at least \$15,000,000, or shall have a line of credit with a commercial bank in the amount of at least \$15,000,000, and shall be authorized by law to perform all the duties imposed upon it by this Indenture. Subject to the terms of the Remarketing Agreement, the Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least 30 days' notice of such resignation to the Issuer, the Borrower, Investor Limited Partner and the Trustee. The Remarketing Agent may be removed, with prior notice to the Issuer, at any time by the Borrower, with at least 30 days' notice of such removal to the Remarketing Agent.

Upon any resignation or removal of the Remarketing Agent, the departing Remarketing Agent shall pay over, assign and deliver any money and Bonds held by it in such capacity to its successor.

The Trustee, within 30 days of the resignation or removal of the Remarketing Agent or the appointment of a successor Remarketing Agent, shall give notice thereof by registered or certified mail to the Rating Agency (if the Bonds are then rated) and to the Holders of the Bonds.

**Section 6.21 Notices to Rating Agency and Remarketing Notice Parties**

The Trustee shall notify the Rating Agency and the Remarketing Notice Parties in writing of (a) the occurrence of an Event of Default of which the Trustee has actual notice, (b) the occurrence of any monetary or other material default under the Loan of which the Trustee has actual notice, (c) any change in the identity of the Trustee, (d) any amendments, modifications, supplements or changes to this Indenture, the Loan Agreement, the Note or the Bonds, including any extension of principal or modification of interest or redemption premium due on any of the Bonds, in each case only in the event the Trustee has actual notice, (e) any change or proposed change in the structure or identity of the Borrower of which the Trustee has actual knowledge, (f) any change or notification of proposed change of the Mandatory Tender Date or Remarketing Date, (g) any partial prepayment of the Loan or the giving of notice of the call for redemption of any Bonds, (h) any change in the investment of funds subject to the lien of this Indenture other than in Eligible Investments, (i) any defeasance or acceleration of the Bonds hereunder, or (j) any change in the Remarketing Agent of which its Trustee has actual knowledge.

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## ARTICLE VII

### DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND HOLDERS

#### **Section 7.01**    **Defaults; Events of Default**

The occurrence of any of the following events is defined as and declared to be and to constitute an Event of Default hereunder:

(a)    Payment of any interest on any Bond shall not be made when and as that interest shall become due and payable;

(b)    Payment of the principal of any Bond shall not be made when and as that principal shall become due and payable, whether at stated maturity, upon acceleration or otherwise;

(c)    Failure by the Issuer to observe or perform any other covenant, agreement or obligation on its part to be observed or performed contained in this Indenture or in the Bonds, which failure shall have continued for a period of 30 days after written notice, by registered or certified mail, to the Issuer and the Borrower specifying the failure and requiring that it be remedied, which notice may be given by the Trustee and shall be given by the Trustee at the written request of the Holders of not less than 25% in aggregate principal amount of Bonds then outstanding; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the Issuer or the Borrower institutes curative action within the applicable period and diligently pursues that action to completion, which must be resolved within 180 days after the aforementioned notice; and

(d)    The occurrence and continuance of an Event of Default as defined in Section 7.1 of the Loan Agreement.

The term “default” or “failure” as used in this Article means (i) a default or failure by the Issuer in the observance or performance of any of the covenants, agreements or obligations on its part to be observed or performed contained in this Indenture or in the Bonds, or (ii) a default or failure by the Borrower under the Loan Agreement, exclusive of any period of grace or notice required to constitute an Event of Default, as provided above or in the Loan Agreement.

#### **Section 7.02**    **Notice of Default**

If an Event of Default shall occur, the Trustee shall give written notice of the Event of Default, by registered or certified mail, to the Issuer, the Borrower, the Investor Limited Partner, the Registrar or the Paying Agent and Authenticating Agent, within five days after the Trustee has notice of the Event of Default pursuant to Section 6.02(f) of this Indenture. If an Event of Default occurs of which the Trustee has notice pursuant to this Indenture, the Trustee shall give written notice thereof, within 30 days after the Trustee’s receipt of notice of its occurrence, to the Holders

of all Bonds then outstanding as shown by the Register at the close of business 15 days prior to the mailing of that notice.

The Investor Limited Partner shall be entitled to cure any Event of Default hereunder within the time frame provided to the Borrower hereunder. The Issuer and Trustee agree that cure of any default or Event of Default made or tendered by the Investor Limited Partner shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

### **Section 7.03    Acceleration**

Upon the occurrence of an Event of Default described in Section 7.01(a) and (b), the Trustee may declare, and upon the written request of the Holders of not less than 25% in aggregate principal amount of Bonds then outstanding the Trustee shall declare, by a notice in writing delivered to the Issuer and the Borrower, the principal of all Bonds then outstanding (if not then due and payable), and the interest accrued thereon, to be due and payable immediately. Upon the occurrence of any Event of Default other than those described in Section 7.01(a) and (b), the Trustee, with the written consent of all Holders of Bonds then outstanding, may declare by a notice in writing delivered to the Issuer and Borrower, the principal of all Bonds then outstanding (if not then due and payable), and the interest accrued thereon, to be due and payable immediately. Upon such declaration, the principal and interest on the Bonds shall become and be due and payable immediately. Interest on the Bonds shall accrue to the date determined by the Trustee for the tender of payment to the Holders pursuant to that declaration; provided, that interest on any unpaid principal of Bonds outstanding shall continue to accrue from the date determined by the Trustee for the tender of payment to the Holders of those Bonds.

The provisions of the preceding paragraph are subject, however, to the condition that if, at any time after declaration of acceleration and prior to the entry of a judgment in a court for enforcement hereunder (after an opportunity for hearing by the Issuer and the Borrower),

(a) all sums payable hereunder (except the principal of and interest on Bonds which have not reached their stated maturity dates but which are due and payable solely by reason of that declaration of acceleration), plus interest to the extent permitted by law on any overdue installments of interest at the rate borne by the Bonds in respect of which the default shall have occurred, shall have been duly paid or provision shall have been duly made therefor by deposit with the Trustee or Paying Agents, and

(b) all existing Events of Default shall have been cured, then and in every case, the Trustee shall waive the Event of Default and its consequences and shall rescind and annul that declaration. No waiver or rescission and annulment shall extend to or affect any subsequent Event of Default or shall impair any rights consequent thereon.

### **Section 7.04    Other Remedies; Rights of Holders**

With or without taking action under Section 7.03 hereof, upon the occurrence and continuance of an Event of Default, the Trustee may pursue any available remedy, including without limitation actions at law or equity to enforce the payment of Bond Debt Service Charges

or the observance and performance of any other covenant, agreement or obligation under this Indenture, the Loan Agreement, the Regulatory Agreement or the Note or any other instrument providing security, directly or indirectly, for the Bonds.

If, upon the occurrence and continuance of an Event of Default, the Trustee is requested to do so by the Holders of at least 25% in aggregate principal amount of Bonds outstanding, the Trustee (subject to the provisions of Sections 6.01 and 6.02 and particularly subparagraph 6.01(c)(iv) and Subsection 6.02 (j) of those Sections), shall exercise any rights and powers conferred by this Section and by Section 7.03 hereof.

No remedy conferred upon or reserved to the Trustee (or to the Holders) by this Indenture is intended to be exclusive of any other remedy. Each remedy shall be cumulative and shall be in addition to every other remedy given hereunder or otherwise to the Trustee or to the Holders now or hereafter existing.

No delay in exercising or omission to exercise any remedy, right or power accruing upon any default or Event of Default shall impair that remedy, right or power or shall be construed to be a waiver of any default or Event of Default or acquiescence therein. Every remedy, right and power may be exercised from time to time and as often as may be deemed to be expedient.

No waiver of any default or Event of Default hereunder, whether by the Trustee or by the Holders, shall extend to or shall affect any subsequent default or Event of Default or shall impair any remedy, right or power consequent thereon.

As the assignee of all right, title and interest of the Issuer in and to the Loan Agreement (except for the Unassigned Issuer's Rights), the Trustee is empowered to enforce each remedy, right and power granted to the Issuer under the Loan Agreement. In exercising any remedy, right or power thereunder or hereunder, the Trustee shall take such action as may be directed by the requisite percentage of the Holders of the Bonds then outstanding, applying the standards described in Sections 6.01 and 6.02 hereof.

#### **Section 7.05 Right of Holders to Direct Proceedings**

Anything to the contrary in this Indenture notwithstanding, the Holders of a majority in aggregate principal amount of Bonds then outstanding shall have the right at any time to direct, by an instrument or document in writing executed and delivered to the Trustee, the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture or any other proceedings hereunder; provided, that (i) any direction shall not be other than in accordance with the provisions of law and of this Indenture, and (ii) the Trustee shall be indemnified as provided in Sections 6.01 and 6.02.

#### **Section 7.06 Application of Money**

After payment of any costs, expenses, liabilities and advances paid, incurred or made by the Trustee in the collection of money and to all fees of the Trustee for Ordinary and Extraordinary Expenses pursuant to any right given or action taken under the provisions of this Article or the provisions of the Loan Agreement, the Regulatory Agreement or the Note (including without limitation, reasonable attorneys' fees and expenses, except as limited by law or judicial order or

decision entered in any action taken under this Article VII), all money received by the Trustee, shall be applied as follows, subject to Section 3.04 hereof:

(a) Unless the principal of all of the Bonds shall have become, or shall have been declared to be, due and payable, all of such money shall be deposited in the Bond Fund and shall be applied:

First – To the payment to the Holders entitled thereto of all installments of interest then due on the Bonds, in the order of the dates of maturity of the installments of that interest, beginning with the earliest date of maturity and, if the amount available is not sufficient to pay in full any particular installment, then to the payment thereof ratably, according to the amounts due on that installment, to the Holders entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds; and

Second – To the payment to the Holders entitled thereto of the unpaid principal of any of the Bonds which shall have become due, in the order of their due dates, beginning with the earliest due date, with interest on those Bonds from the respective dates upon which they became due at the rates specified in those Bonds, and if the amount available is not sufficient to pay in full all Bonds due on any particular date, together with that interest, then to the payment thereof ratably, according to the amounts of principal due on that date, to the Holders entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds.

(b) If the principal of all of the Bonds shall have become due or shall have been declared to be due and payable pursuant to this Article, all of such money shall be deposited into the Bond Fund and shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest, of interest over principal, of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Holders entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds.

(c) If the principal of all of the Bonds shall have been declared to be due and payable pursuant to this Article, and if that declaration thereafter shall have been rescinded and annulled under the provisions of Section 7.03 or 7.10 hereof, subject to the provisions of paragraph (b) of this Section in the event that the principal of all of the Bonds shall become due and payable later, the money shall be deposited in the Bond Fund and shall be applied in accordance with the provisions of Article III.

(d) Whenever money is to be applied pursuant to the provisions of this Section, such money shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of money available for application and the likelihood of additional money becoming available for application in the future. Whenever the Trustee shall direct the application of such money, it shall fix the date upon which the

application is to be made, and upon that date, interest shall cease to accrue on the amounts of principal, if any, to be paid on that date, provided the money is available therefor. The Trustee shall give notice of the deposit with it of any money and of the fixing of that date, all consistent with the requirements of Section 3.04 hereof for the establishment of, and for giving notice with respect to, a Special Record Date for the payment of overdue interest. The Trustee shall not be required to make payment of principal of a Bond to the Holder thereof, until the Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if it is paid fully.

**Section 7.07 Remedies Vested in Trustee**

All rights of action (including without limitation, the right to appear on behalf of the Issuer and the Holders of the Bonds in any bankruptcy or insolvency proceeding and to file proof of claims in any such proceeding) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto. Any suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining any Holders as plaintiffs or defendants. Any recovery of judgment shall be for the benefit of the Holders of the Outstanding Bonds, subject to the provisions of this Indenture.

**Section 7.08 Rights and Remedies of Holders**

A Holder shall not have any right to institute any suit, action or proceeding for the enforcement of this Indenture, for the execution of any trust hereof, or for the exercise of any other remedy hereunder, unless:

- (a) there has occurred and is continuing an Event of Default of which the Trustee has been notified, as provided in paragraph (f) of Section 6.02 hereof, or of which it is deemed to have notice under that paragraph,
- (b) the Holders of at least 25% in aggregate principal amount of Bonds then outstanding shall have made written request to the Trustee and shall have afforded the Trustee reasonable opportunity to proceed to exercise the remedies, rights and powers granted herein or to institute the suit, action or proceeding in its own name, and shall have offered indemnity to the Trustee as provided in Sections 6.01 and 6.02 hereof, and
- (c) the Trustee thereafter shall have failed or refused to exercise the remedies, rights and powers granted herein or to institute the suit, action or proceeding in its own name.

At the option of the Trustee, that notification (or notice), request, opportunity and offer of indemnity are conditions precedent in every case, to the institution of any suit, action or proceeding described above.

No one or more Holders of the Bonds shall have any right to affect, disturb or prejudice in any manner whatsoever the security or benefit of this Indenture by its or their action, or to enforce, except in the manner provided herein, any remedy, right or power hereunder. Any suit, action or proceedings shall be instituted, had and maintained in the manner provided herein for the benefit

of the Holders of all Bonds then outstanding. Nothing in this Indenture shall affect or impair, however, the right of any Holder to enforce the payment of the Bond Debt Service Charges on any Bond owned by that Holder at and after the maturity thereof, at the place, from the sources and in the manner expressed in that Bond.

**Section 7.09    Termination of Proceedings**

In case the Trustee shall have proceeded to enforce any remedy, right or power under this Indenture in any suit, action or proceedings, and the suit, action or proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, the Issuer, the Trustee and the Holders shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Trustee shall continue as if no suit, action or proceedings had been taken.

**Section 7.10    Waivers of Events of Default**

The Trustee shall waive any Event of Default hereunder and its consequences and may rescind and annul any declaration of maturity of principal of or interest on, the Bonds upon the written request of the Holders of

(a) at least a majority in aggregate principal amount of all Bonds then outstanding in respect of which an Event of Default in the payment of Bond Debt Service Charges exists, or

(b) at least 25% in aggregate principal amount of all Bonds then outstanding, in the case of any other Event of Default.

There shall not be so waived, however, any Event of Default described in paragraph (a) or (b) of Section 7.01 hereof, nor shall any declaration of acceleration in connection therewith be rescinded or annulled, unless at the time of that waiver or rescission and annulment payments of the amounts provided in Section 7.03 hereof for waiver and rescission and annulment in connection with acceleration of maturity have been made or provision has been made therefor. In the case of the waiver or rescission and annulment, or in case any suit, action or proceedings taken by the Trustee on account of any Event of Default shall have been discontinued, abandoned or determined adversely to it, the Issuer, the Trustee and the Holders shall be restored to their former positions and rights hereunder, respectively. No waiver or rescission shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

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## ARTICLE VIII

### SUPPLEMENTAL INDENTURES

#### **Section 8.01 Supplemental Indentures Generally**

The Issuer and the Trustee may enter into indentures supplemental to this Indenture, as provided in this Article and pursuant to the other provisions therefor in this Indenture. Trustee shall deliver copies of all Supplemental Indentures to Borrower and Investor Limited Partner. Any subsequent amendment to this Indenture or the Loan Agreement is subject to prior written approval of HUD (so long as the Project is subject to a mortgage insured or held by HUD). No amendment to this Indenture or the Loan Agreement shall conflict with the provisions of the Program Obligations (as defined in the FHA Mortgage).

#### **Section 8.02 Supplemental Indentures Not Requiring Consent of Holders**

Without the written consent of, or notice to, any of the Holders, the Issuer and the Trustee may enter into indentures supplemental to this Indenture for any one or more of the following purposes:

- (a) To cure any ambiguity, inconsistency or formal defect or omission in this Indenture;
- (b) To grant to or confer upon the Trustee for the benefit of the Holders any additional rights, remedies, powers or authority that lawfully may be granted to or conferred upon the Holders or the Trustee;
- (c) To assign additional revenues under this Indenture;
- (d) To accept additional security and instruments and documents of further assurance with respect to the Project;
- (e) To add to the covenants, agreements and obligations of the Issuer under this Indenture, other covenants, agreements and obligations to be observed for the protection of the Holders, or to surrender or limit any right, power or authority reserved to or conferred upon the Issuer in this Indenture;
- (f) To evidence any succession to the Issuer and the assumption by its successor of the covenants, agreements and obligations of the Issuer under this Indenture, the Loan Agreement and the Bonds;
- (g) To permit the Trustee to comply with any obligations imposed upon it by law;
- (h) To specify further the duties and responsibilities of, and to define further the relationship among, the Trustee, the Registrar and any Authenticating Agents or Paying Agents;

(i) To achieve compliance of this Indenture with any applicable federal securities or tax law;

(j) To make amendments to the provisions hereof relating to arbitrage matters under Section 148 of the Code, if, in the Opinion of Bond Counsel, those amendments would not cause the interest on the Bonds outstanding to be included in gross income of the Holders for federal income tax purposes, which amendments may, among other things, change the responsibility for making the relevant calculations, provided that in no event shall such amendment delegate to the Trustee, without its consent, the obligation to make or perform the calculations required under Section 148 of the Code;

(k) To maintain the rating then in effect on the Bonds;

To permit any other amendment which is not materially adverse to the Trustee or the Holders

The provisions of Subsections 8.02(h) and (j) shall not be deemed to constitute a waiver by the Trustee, the Registrar, the Issuer or any Holder of any right which it may have in the absence of those provisions to contest the application of any change in law to this Indenture or the Bonds.

### **Section 8.03 Supplemental Indentures Requiring Consent of Holders**

Exclusive of Supplemental Indentures to which reference is made in Section 8.02 hereof and subject to the terms, provisions and limitations contained in this Section, and not otherwise, with the written consent of the Holders of not less than a majority in aggregate principal amount of the Bonds at the time outstanding, evidenced as provided in this Indenture, and with the consent of the Borrower if required by Section 8.04 hereof, the Issuer and the Trustee may execute and deliver Supplemental Indentures adding any provisions to, changing in any manner or eliminating any of the provisions of this Indenture or any Supplemental Indenture or restricting in any manner the rights of the Holders. Nothing in this Section or Section 8.02 hereof shall permit, however, or be construed as permitting:

(a) without the consent of the Holder of each Bond so affected, (i) an extension of the maturity of the principal of or the interest on any Bond or (ii) a reduction in the principal amount of any Bond or the rate of interest thereon, or

(b) without the consent of the Holders of all Bonds then outstanding, (i) the creation of a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (ii) a reduction in the aggregate principal amount of the Bonds required for consent to a Supplemental Indenture.

If the Issuer shall request that the Trustee execute and deliver any Supplemental Indenture for any of the purposes of this Section, upon (i) being satisfactorily indemnified with respect to its expenses in connection therewith, and (ii) if required by Section 8.04 hereof, receipt of the Borrower's consent to the proposed execution and delivery of the Supplemental Indenture, the Trustee shall cause notice of the proposed execution and delivery of the Supplemental Indenture to be mailed by first-class mail, postage prepaid, to all Holders of Bonds then outstanding at their

addresses as they appear on the Register at the close of business on the fifteenth day preceding that mailing.

The Trustee shall not be subject to any liability to any Holder by reason of the Trustee's failure to mail, or the failure of any Holder to receive, the notice required by this Section. Any failure of that nature shall not affect the validity of the Supplemental Indenture when there has been consent thereto as provided in this Section. The notice shall set forth briefly the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the designated corporate trust office of the Trustee for inspection by all Holders.

If the Trustee shall receive, within a period prescribed by the Borrower, of not less than 60 days, but not exceeding one year, following the mailing of the notice, an instrument or document or instruments or documents, in form to which the Trustee does not reasonably object, purporting to be executed by the Holders of not less than a majority in aggregate principal amount of the Bonds then outstanding (which instrument or document or instruments or documents shall refer to the proposed Supplemental Indenture in the form described in the notice and specifically shall consent to the Supplemental Indenture in substantially that form), the Trustee shall, but shall not otherwise, execute and deliver the Supplemental Indenture in substantially the form to which reference is made in the notice as being on file with the Trustee, without liability or responsibility to any Holder, regardless of whether that Holder shall have consented thereto.

Any consent shall be binding upon the Holder of the Bond giving the consent and, anything herein to the contrary notwithstanding, upon any subsequent Holder of that Bond and of any Bond issued in exchange therefor (regardless of whether the subsequent Holder has notice of the consent to the Supplemental Indenture). At any time after the Holders of the required percentage of Bonds shall have filed their consents to the Supplemental Indenture, the Trustee shall make and file with the Issuer a written statement that the Holders of the required percentage of Bonds have filed those consents. That written statement shall be conclusive evidence that the consents have been so filed.

If the Holders of the required percentage in aggregate principal amount of Bonds outstanding shall have consented to the Supplemental Indenture, as provided in this Section, no Holder shall have any right (a) to object to (i) the execution or delivery of the Supplemental Indenture, (ii) any of the terms and provisions contained therein, or (iii) the operation thereof, (b) to question the propriety of the execution and delivery thereof, or (c) to enjoin or restrain the Trustee or the Issuer from that execution or delivery or from taking any action pursuant to the provisions thereof.

#### **Section 8.04 Consent of Borrower and Remarketing Agent**

Anything contained herein to the contrary notwithstanding, a Supplemental Indenture executed and delivered in accordance with this Article VIII which affects any rights or obligations of the Borrower shall not become effective unless and until the Borrower shall have consented in writing to the execution and delivery of that Supplemental Indenture. The Trustee shall cause notice of the proposed execution and delivery of any Supplemental Indenture and a copy of the proposed Supplemental Indenture to be mailed to the Borrower, as provided in Section 13.03 hereof, (i) at least 30 days (unless waived by the Borrower) before the date of the proposed execution and delivery in the case of a Supplemental Indenture to which reference is made in

Section 8.02 hereof, and (ii) at least 30 days (unless waived by the Borrower) before the giving of the notice of the proposed execution and delivery in the case of a Supplemental Indenture for which provision is made in Section 8.03 hereof.

Anything contained herein to the contrary notwithstanding, a Supplemental Indenture executed and delivered in accordance with this Article VIII which affects any rights or obligations of the Remarketing Agent shall not become effective unless and until the Remarketing Agent shall have consented in writing to the execution and delivery of that Supplemental Indenture. The Trustee shall cause notice of the proposed execution and delivery of any Supplemental Indenture and a copy of the proposed Supplemental Indenture to be mailed to the Remarketing Agent (i) at least 30 days (unless waived by the Remarketing Agent) before the date of the proposed execution and delivery in the case of a Supplemental Indenture to which reference is made in Section 8.02, and (ii) at least 30 days (unless waived by the Remarketing Agent) before the giving of the notice of the proposed execution and delivery in the case of a Supplemental Indenture for which provision is made in Section 8.03.

**Section 8.05 Authorization to Trustee; Effect of Supplement**

The Trustee is authorized to join with the Issuer in the execution and delivery of any Supplemental Indenture in accordance with this Article and to make the further agreements and stipulations which may be contained therein. Thereafter,

- (a) that Supplemental Indenture shall form a part of this Indenture;
- (b) all terms and conditions contained in that Supplemental Indenture as to any provision authorized to be contained therein shall be deemed to be a part of the terms and conditions of this Indenture for any and all purposes;
- (c) this Indenture shall be deemed to be modified and amended in accordance with the Supplemental Indenture; and
- (d) the respective rights, duties and obligations under this Indenture of the Issuer, the Borrower, the Trustee, the Remarketing Agent, the Registrar, the Paying Agents, the Authenticating Agents and all Holders of Bonds then outstanding shall be determined, exercised and enforced hereunder in a manner which is subject in all respects to those modifications and amendments made by the Supplemental Indenture.

Express reference to any executed and delivered Supplemental Indenture may be made in the text of any Bonds issued thereafter, if that reference is deemed necessary or desirable by the Trustee or the Issuer. A copy of any Supplemental Indenture for which provision is made in this Article, except a Supplemental Indenture described in clause (g) of Section 8.02 hereof, shall be mailed by the Trustee to the Registrar, each Authenticating Agent and Paying Agent. The Trustee shall not be required to execute any supplemental indenture containing provisions adverse to the Trustee.

**Section 8.06 Opinion of Counsel**

The Trustee shall be entitled to receive, and shall be fully protected in relying upon, the opinion of any counsel approved by it as conclusive evidence that (i) any proposed Supplemental Indenture complies with the provisions of this Indenture, and (ii) it is proper for the Trustee to join in the execution of that Supplemental Indenture under the provisions of this Article. That counsel may be counsel for the Issuer or the Borrower and shall be an expense of the Borrower.

**Section 8.07 Modification by Unanimous Consent**

Notwithstanding anything contained elsewhere in this Indenture, with the exception of Section 13.14, the rights and obligations of the Issuer and of the Holders, and the terms and provisions of the Bonds and this Indenture or any Supplemental Indenture, may be modified or altered in any respect with the consent of (i) the Issuer, (ii) the Holders of all of the Bonds then outstanding, (iii) the Borrower; and (iv) if such modification or alteration contains provisions adverse to the Trustee, the Trustee.

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## ARTICLE IX

### DEFEASANCE

#### **Section 9.01 Release of Indenture**

If (i) the Issuer shall pay all of the Outstanding Bonds, or shall cause them to be paid and discharged, or if there otherwise shall be paid to the Holders of the Outstanding Bonds, all Bond Debt Service Charges due or to become due thereon, and (ii) provision also shall be made for the payment of all other sums payable hereunder or under the Loan Agreement, the Regulatory Agreement and the Note, then this Indenture shall cease, determine and become null and void (except for those provisions surviving by reason of Section 9.03 hereof in the event the Bonds are deemed paid and discharged pursuant to Section 9.02 hereof), and the covenants, agreements and obligations of the Issuer hereunder shall be released, discharged and satisfied.

Thereupon, and subject to the provisions of Section 9.03 hereof if applicable,

(a) the Trustee shall release this Indenture (except for those provisions surviving by reason of Section 9.03 hereof in the event the Bonds are deemed paid and discharged pursuant to Section 9.02 hereof), and shall execute and deliver to the Issuer any instruments or documents in writing as shall be requisite to evidence that release and discharge or as reasonably may be requested by the Issuer, and

(b) the Trustee and any other Paying Agents shall assign and deliver to the Issuer any property subject at the time to the lien of this Indenture which then may be in their possession, except amounts in the Bond Fund required (a) to be paid to the Borrower under Section 5.08 hereof, or (b) to be held by the Trustee and the Paying Agents under Section 5.09 hereof or otherwise for the payment of Bond Debt Service Charges.

#### **Section 9.02 Payment and Discharge of Bonds**

All or any part of the Bonds shall be deemed to have been paid and discharged within the meaning of this Indenture, including without limitation, Section 9.01 hereof, if:

(a) the Trustee, as paying agent, and the Paying Agents shall have received, in trust for and irrevocably committed thereto, sufficient money, or

(b) the Trustee shall have received, in trust for and irrevocably committed thereto, noncallable direct obligations of or obligations guaranteed as to full and timely payment by the United States of America which are certified by an Independent public accounting firm or such other firm experienced with such certifications of national reputation to be of such maturities or redemption dates and interest payment dates, and to bear such interest, as will be sufficient together with any money to which reference is made in subparagraph (a) above, without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom (which earnings are to be held likewise in trust and so irrevocably committed, except as provided herein),

for the payment of all Bond Debt Service Charges on those Bonds at their maturity.

Any money held by the Trustee in accordance with the provisions of this Section may be invested by the Trustee only in noncallable direct obligations of or obligations guaranteed as to full and timely payment by the United States of America having maturity dates, or having redemption dates which, at the option of the Holder of those obligations, shall be not later than the date or dates at which money will be required for the purposes described above. To the extent that any income or interest earned by, or increment to, the investments held under this Section is determined from time to time by the Trustee to be in excess of the amount required to be held by the Trustee for the purposes of this Section, that income, interest or increment shall be transferred at the time of that determination in the manner provided in Section 5.08 hereof for transfers of amounts remaining in the Bond Fund.

If any Bonds shall be deemed paid and discharged pursuant to this Section 9.02, then within 15 days after such Bonds are so deemed paid and discharged the Trustee shall cause a written notice to be given to each Holder as shown on the Register on the date on which such Bonds are deemed paid and discharged. Such notice shall state the numbers of the Bonds deemed paid and discharged or state that all Bonds are deemed paid and discharged and shall set forth a description of the obligations held pursuant to subparagraph (b) of the first paragraph of this Section 9.02.

**Section 9.03    Survival of Certain Provisions**

Notwithstanding the foregoing, any provisions of the Bond Resolution and this Indenture which relate to the maturity of Bonds, interest payments and dates thereof, exchange, transfer and registration of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, the storage and shredding of cancelled Bonds, non-presentment of Bonds, the holding of money in trust, and repayments to the Borrower from the Bond Fund, the rebate of money to the United States in accordance with Section 5.09 hereof, and the rights and duties of the Trustee and the Registrar in connection with all of the foregoing, shall remain in effect and be binding upon the Trustee, the Registrar, the Authenticating Agents, Paying Agents and the Holders notwithstanding the release and discharge of this Indenture. The provisions of this Article shall survive the release, discharge and satisfaction of this Indenture. The obligations of the Borrower to pay the Trustee its fees and expenses hereunder shall survive the release, discharge and satisfaction of this Indenture.

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**ARTICLE X**  
**COVENANTS AND AGREEMENTS**  
**OF THE ISSUER**

**Section 10.01 Covenants and Agreements of the Issuer**

In addition to any other covenants and agreements of the Issuer contained in the Loan Agreement, this Indenture or the Bond Resolution, the Issuer further covenants and agrees with the Holders and the Trustee as follows:

(a) Payment of Bond Debt Service Charges. The Issuer will pay all Bond Debt Service Charges, or cause them to be paid, solely from the sources provided herein, on the dates, at the places and in the manner provided in this Indenture.

(b) Issuer Revenues and Assignment of Issuer Revenues. The Issuer will not assign the Issuer Revenues or create or authorize to be created any debt, lien or charge thereon, other than the assignment thereof under this Indenture.

(c) Issuer Not to Adversely Affect Exclusion From Gross Income of Interest on Bonds. The Issuer covenants that it (i) will take, or require to be taken, at the written direction of any Holder or the Trustee, and at the expense of the Borrower, all actions that may be required of the Issuer for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and (ii) will not take or authorize to be taken any actions that would, to its actual knowledge, adversely affect that exclusion under the provisions of the Code.

(d) Patriot Act. The Issuer covenants and agrees to provide documentation as reasonably requested or required by the Trustee to enable the Trustee to satisfy the requirements of the USA Patriot Act as described in Section 13.13 of this Indenture.

**Section 10.02 Observance and Performance of Covenants, Agreements, Authority and Actions**

The Issuer will observe and perform faithfully at all times all covenants, agreements, authority, actions, undertakings, stipulations and provisions to be observed or performed on its part under the Loan Agreement, this Indenture, the Bond Resolution, the Regulatory Agreement and the Bonds which are executed, authenticated and delivered under this Indenture, and under all proceedings of its City Council pertaining thereto.

The Issuer represents and warrants that:

(a) It is duly authorized by the Constitution and laws of the State, including particularly and without limitation the Act, to issue the Bonds, to execute and deliver this Indenture, the Loan Agreement and the Regulatory Agreement and to provide the security for payment of the Bond Debt Service Charges in the manner and to the extent set forth in this Indenture.

(b) All actions required on its part to be performed for the issuance, sale and delivery of the Bonds and for the execution and delivery of this Indenture and the Loan Agreement have been taken duly and effectively.

(c) The Bonds will be valid and enforceable special, limited obligations of the Issuer according to their terms.

**Section 10.03 Trustee May Enforce Issuer's Rights**

The Trustee may enforce, in its name or in the name of the Issuer, all rights of the Issuer for and on behalf of the Holders, except for Unassigned Issuer's Rights, and may enforce all covenants, agreements and obligations of the Borrower under and pursuant to the Loan Agreement, regardless of whether the Issuer is in default in the pursuit or enforcement of those rights, covenants, agreements or obligations. The Issuer, however, will do all things and take all actions on its part necessary to comply with covenants, agreements, obligations, duties and responsibilities on its part to be observed or performed under the Loan Agreement, and will take all actions within its authority to keep the Loan Agreement in effect in accordance with the terms thereof.

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## ARTICLE XI

### AMENDMENTS TO LOAN AGREEMENT, REGULATORY AGREEMENT AND NOTE

#### **Section 11.01 Amendments Not Requiring Consent of Holders**

Without the consent of or notice to the Holders, the Issuer, the Borrower and the Trustee may consent to any amendment, change or modification of the Loan Agreement, the Regulatory Agreement or the Note as may be required (i) by the provisions of the Loan Agreement, the Regulatory Agreement or this Indenture, (ii) for the purpose of curing any ambiguity, inconsistency or formal defect or omission in the Loan Agreement, the Regulatory Agreement or the Note, (iii) in connection with an amendment or to effect any purpose for which there could be an amendment of this Indenture pursuant to Section 8.02 hereof, or (iv) in connection with any other change therein which is not materially adverse to the Trustee or the Holders of the Bonds, applying the standards described in Sections 6.01 and 6.02 hereof.

Any subsequent amendment to this Indenture or the Loan Agreement is subject to prior written approval of HUD (so long as the Project is subject to a mortgage insured or held by HUD). No amendment to this Indenture or the Loan Agreement shall conflict with the provisions of the Program Obligations (as defined in the FHA Mortgage).

#### **Section 11.02 Amendments Requiring Consent of Holders**

Except for the amendments, changes or modifications contemplated in Section 11.01 hereof, neither the Issuer nor the Trustee shall consent to:

(a) any amendment, change or modification of the Loan Agreement or the Note which would change the amount or time as of which Loan Payments are required to be paid, without the giving of notice as provided in this Section of the proposed amendment, change or modification and receipt of the written consent thereto of the Holders of all of the then Outstanding Bonds affected by such amendment, change or modification, or

(b) any other amendment, change or modification of the Loan Agreement, the Regulatory Agreement or the Note without the giving of notice as provided in this Section of the proposed amendment, change or modification and receipt of the written consent thereto of the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding affected by such amendment, change or modification.

The consent of the Holders shall be obtained as provided in Section 8.03 hereof with respect to Supplemental Indentures.

If the Issuer or the Authorized Borrower Representative shall request at any time the consent of the Trustee to any proposed amendment, change or modification of the Loan Agreement, the Regulatory Agreement or the Note contemplated in subparagraphs (a) or (b) of this Section, upon being indemnified satisfactorily with respect to expenses, the Trustee shall cause notice of the proposed amendment, change or modification to be provided in the manner which is required by Section 8.03 hereof with respect to notice of Supplemental Indentures. The notice

shall set forth briefly the nature of the proposed amendment, change or modification and shall state that copies of the instrument or document embodying it are on file at the designated corporate trust office of the Trustee for inspection by all Holders.

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## ARTICLE XII

### MEETINGS OF HOLDERS

#### **Section 12.01** Purposes of Meetings

A meeting of Holders may be called at any time and from time to time pursuant to the provisions of this Article XII, to take any action (i) authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Bonds, (ii) under any provision of this Indenture or (iii) authorized or permitted by law.

#### **Section 12.02** Call of Meetings

The Trustee may (but shall not be obligated to) call at any time a meeting of Holders pursuant to Section 12.01 to be held at any reasonable time and place the Trustee shall determine. Notice of such meeting, setting forth the time, place and generally the subject thereof, shall be mailed by first-class mail, postage prepaid, not fewer than 15 nor more than 90 days prior to the date of the meeting to the Holders at their addresses as they appear on the Register on the fifteenth day preceding such mailing, which fifteenth day, preceding the mailing, shall be the record date for the meeting.

At any time, the Issuer or the Borrower, or the Holders of at least 25% in aggregate principal amount of the Bonds then outstanding, shall have requested the Trustee to call a meeting of Holders, by written request setting forth the purpose of the meeting, and the Trustee shall not have mailed the notice of the meeting within 20 days after receipt of the request, then the Issuer, the Borrower, the Investor Limited Partner or the Holders of Bonds in the amount above specified may determine the time and the place of the meeting and may call the meeting to take any action authorized in Section 12.01, by mailing notice thereof as provided above.

Any meetings of Holders shall be valid without notice, if the Holders of all Bonds then outstanding are present in person or by proxy, or if notice is waived before or after the meeting by the Holders of all Bonds outstanding who were not so present at the meeting, and if the Issuer, the Borrower and the Trustee are either present by duly authorized representatives or have waived notice, before or after the meeting.

#### **Section 12.03** Voting

To be entitled to vote at any meeting of Holders, a Person shall (a) be a Holder of one or more Outstanding Bonds as of the record date for the meeting as determined above, or (b) be a person appointed by an instrument or document in writing as proxy by a Person who is a Holder as of the record date for the meeting, of one or more Outstanding Bonds. Each Holder or proxy shall be entitled to one vote for each \$100,000 principal amount of Bonds held or represented by it.

The vote upon any resolution submitted to any meeting of Holders shall be by written ballots on which shall be subscribed the signatures of the Holders of Bonds or of their representatives by proxy and the identifying number or numbers of the Bonds held or represented by them.

**Section 12.04 Meetings**

Notwithstanding any other provisions of this Indenture, the Trustee may make any reasonable regulations which it may deem to be advisable for meetings of Holders, with regard to

- (a) proof of the holding of Bonds and of the appointment of proxies,
- (b) the appointment and duties of inspectors of votes,
- (c) recordation of the proceedings of those meetings,
- (d) the execution, submission and examination of proxies and other evidence of the right to vote, and
- (e) any other matters concerning the conduct, adjournment or reconvening of meetings which it may think fit.

The Trustee shall appoint a temporary chair of the meeting by an instrument or document in writing, unless the meeting shall have been called by the Issuer, the Borrower or by the Holders, as provided in Section 12.02, in which case the Issuer, the Borrower or the Holders calling the meeting, as the case may be, shall appoint a temporary chair in like manner. A permanent chair and a permanent secretary of the meeting shall be elected by vote of the Holders of a majority in principal amount of the Bonds represented at the meeting and entitled to vote.

The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at the meeting and their counsel, any representatives of the Trustee or Registrar and their counsel, any representatives of the Issuer and its counsel and any representatives of the Borrower and its counsel.

**Section 12.05 Miscellaneous**

Nothing contained in this Article XII shall be deemed or construed to authorize or permit any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders under any of the provisions of this Indenture or of the Bonds by reason of any call of a meeting of Holders or any rights conferred expressly or impliedly hereunder to make a call.

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## ARTICLE XIII

### MISCELLANEOUS

#### **Section 13.01 Limitation of Rights**

With the exception of rights conferred expressly in this Indenture, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any Person other than the parties hereto, the Registrar, the Authenticating Agents, the Paying Agents, the Borrower, the Investor Limited Partner and the Holders of the Bonds any legal or equitable right, remedy, power or claim under or with respect to this Indenture or any covenants, agreements, conditions and provisions contained herein. This Indenture and all of those covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the parties hereto, the Registrar, the Paying Agent, the Authenticating Agent, the Borrower, the Investor Limited Partner and the Holders of the Bonds, as provided herein.

#### **Section 13.02 Severability**

In case any section or provision of this Indenture, or any covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Indenture, or any application thereof, is held to be illegal or invalid for any reason, or is inoperable at any time, that illegality, invalidity or inoperability shall not affect the remainder thereof or any other section or provision of this Indenture or any other covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Indenture, all of which shall be construed and enforced at the time as if the illegal, invalid or inoperable portion were not contained therein.

Any illegality, invalidity or inoperability shall not affect any legal, valid and operable section, provision, covenant, agreement, stipulation, obligation, act, action, part or application, all of which shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law from time to time.

#### **Section 13.03 Notices**

It shall be sufficient service or giving of any notice, request, complaint, demand or other instrument or document, if mailed by registered or certified mail, postage prepaid, or forwarded by overnight courier service, delivery charges prepaid (receipt of which to be evidenced by a signed receipt from such overnight delivery service), or sent by facsimile which produces evidence of transmission, addressed to the appropriate party at its Notice Address.

Such notice or other communication shall be deemed given on (i) the third (3rd) Business Day following deposit thereof in the mail when mailed by registered or certified mail, (ii) the Business Day immediately following deposit thereof with the overnight courier service when forwarded by an overnight courier service, and (iii) the Business Day immediately following the date specified in the written evidence of electronic transmission. The Issuer, Trustee, the Borrower, the Investor Limited Partner may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

Any notice given pursuant to Sections 6.09, 6.13, 7.02, 7.03, 8.02, 8.03, 9.02 and 11.02 shall be simultaneously given to the Rating Agency, if and so long as the Bonds are rated. The foregoing parties may designate, by written notice given hereunder, any further or different addresses to which any subsequent notice, request, complaint, demand or other instrument or document shall be sent. The Trustee shall designate, by written notice to the Issuer, the Borrower and the Investor Limited Partner, the addresses to which notices or copies thereof shall be sent to the Registrar, the Authenticating Agents and the Paying Agents. In addition to the foregoing, the Trustee hereby agrees to send written notice to the Rating Agency, if and so long as the Bonds are rated, upon the occurrence of any of the following events: (1) any change in the Trustee; (2) any amendment to the documents; (3) a payment of all principal and interest on all of the Bonds; or (4) any defeasance or acceleration of the Bonds.

In connection with any notice mailed pursuant to the provisions of this Indenture, a certificate of the Trustee, the Issuer, the Registrar, the Authenticating Agents, the Borrower, the Investor Limited Partner or the Holders of the Bonds, whichever or whoever mailed that notice, that the notice was so mailed shall be conclusive evidence of the proper mailing of the notice.

#### **Section 13.04 Suspension of Mail and Courier Service**

If because of the suspension of delivery of registered or certified mail or delivery by overnight courier services, the Trustee shall be unable to mail by registered or certified mail or forward by overnight courier service any notice required to be given by the provisions of this Indenture, the Trustee shall use its best efforts to give such notice in such other manner as in the judgment of the Trustee shall most effectively approximate the required mailing or forwarding thereof, and the giving of that notice in that manner for all purposes of this Indenture shall be deemed to be in compliance with the requirements of Section 13.03 hereof. Except as otherwise provided herein, the mailing of any notice by first class mail, postage prepaid, shall be deemed given on the third (3rd) Business Day after upon deposit of that notice in the mail and the giving of any notice by any other means of delivery shall be deemed complete upon receipt of the notice by the delivery service.

#### **Section 13.05 Payments Due on Saturdays, Sundays and Holidays**

If any Interest Payment Date or a date of maturity of the principal of any Bonds is a Saturday, Sunday or a day on which (i) the Trustee is required, or authorized or not prohibited, by law (including without limitation, executive orders) to close and is closed, then payment of interest and principal need not be made by the Trustee or the Paying Agent on that date, but that payment may be made on the next succeeding business day on which the Trustee and the Paying Agent are open for business with the same force and effect as if that payment were made on the Interest Payment Date or date of maturity, and no interest shall accrue for the period after that date, or (ii) a Paying Agent is required, or authorized or not prohibited, by law (including without limitation, executive orders) to close and is closed, then payment of interest and principal need not be made by that Paying Agent on that date, but that payment may be made on the next succeeding business day on which that Paying Agent is open for business with the same force and effect as if that payment were made on the Interest Payment Date or date of maturity and no interest shall accrue for the period after that date; provided, that if the Trustee is open for business on the applicable Interest Payment Date or date of maturity, it shall make any payment required hereunder with

respect to payment of interest on Outstanding Bonds and payment of principal of the Bonds presented to it for payment, regardless of whether the Paying Agent shall be open for business or closed on the applicable Interest Payment Date or date of maturity.

**Section 13.06 Instruments of Holders**

Any writing, including without limitation, any consent, request, direction, approval, objection or other instrument or document, required under this Indenture to be executed by any Holder may be in any number of concurrent writings of similar tenor and may be executed by that Holder in person or by an agent or attorney appointed in writing. Proof of (i) the execution of any writing, including without limitation, any consent, request, direction, approval, objection or other instrument or document, (ii) the execution of any writing appointing any agent or attorney, and (iii) the ownership of Bonds, shall be sufficient for any of the purposes of this Indenture, if made in the following manner, and if so made, shall be conclusive in favor of the Trustee with regard to any action taken thereunder, namely:

(a) The fact and date of the execution by any person of any writing may be proved by the certificate of any officer in any jurisdiction, who has power by law to take acknowledgments within that jurisdiction, that the person signing the writing acknowledged that execution before that officer, or by affidavit of any witness to that execution; and

(b) The fact of ownership of Bonds shall be proved by the Register maintained by the Registrar.

Nothing contained herein shall be construed to limit the Trustee to the foregoing proof, and the Trustee may accept any other evidence of the matters stated therein which it deems to be sufficient. Any writing, including without limitation, any consent, request, direction, approval, objection or other instrument or document, of the Holder of any Bond shall bind every future Holder of the same Bond, with respect to anything done or suffered to be done by the Issuer, the Borrower, the Trustee, the Registrar or the Paying Agent or Authenticating Agent pursuant to that writing.

**Section 13.07 Priority of this Indenture**

This Indenture shall be superior to any liens which may be placed upon the Issuer Revenues or any other funds or accounts created pursuant to this Indenture.

**Section 13.08 Extent of Covenants; No Personal Liability**

All covenants, stipulations, obligations and agreements of the Issuer contained in this Indenture are and shall be deemed to be covenants, stipulations, obligations and agreements of the Issuer to the full extent authorized by the Act and permitted by the Constitution of the State. No covenant, stipulation, obligation or agreement of the Issuer contained in this Indenture shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, officer, agent or employee of the Issuer or the City Council of the Issuer in other than that person's official capacity. Neither the members of the City Council of the Issuer nor any official executing the Bonds, this Indenture, the Loan Agreement or any amendment or supplement hereto or thereto

shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance or execution hereof or thereof.

**Section 13.09 Binding Effect**

This Indenture shall inure to the benefit of and shall be binding upon the Issuer and the Trustee and their respective successors and assigns, subject, however, to the limitations contained herein.

**Section 13.10 Counterparts**

This Indenture may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

**Section 13.11 Governing Law**

This Indenture and the Bonds shall be deemed to be contracts made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

**Section 13.12 Security Advice Waiver**

The Issuer acknowledges that regulations of the Comptroller of the Currency grant the Borrower the right to receive brokerage confirmations of the security transactions as they occur. The Borrower specifically waives such notification to the extent permitted by law and will receive periodic cash transaction statements that will detail all investment transactions.

**Section 13.13 Patriot Act**

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust or other legal entity the Trustee will request documentation to verify its formation and existence as a legal entity. Furthermore, if required by the Patriot Act, Trustee may request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation

**Section 13.14 FHA Federal Laws and Requirements Control**

Notwithstanding anything in this Indenture or the Loan Agreement to the contrary:

(a) Borrower, Trustee and Issuer acknowledge that this Indenture and the Loan Agreement, and any obligations of Borrower under the Loan Agreement, are subject and subordinate to the FHA Loan Documents and Program Obligations (as defined in the FHA Mortgage). Notwithstanding any provision in this Indenture or the Loan Agreement to the contrary, no obligations of the Borrower under the Loan Agreement shall be payable except from (A) Surplus Cash (as defined in the HUD Regulatory Agreement), (B) funds that are not derived from (i) revenues of the Project (as defined in the FHA Mortgage), (ii) the

proceeds of the FHA Note, or (iii) any reserve or deposit made with the FHA Lender or any other party as required by HUD in connection with the FHA Loan Documents, or (C) FHA Lender Funds which have been deposited into the Collateral Fund by or at the direction of the FHA Lender (collectively, “Non-Project Sources”). No claims or actions shall be made (or payable) under this Indenture against the Project, the FHA Lender, the proceeds of the FHA Note, or the assets of the Borrower, except from Non-Project Sources. In addition, the rights and obligations of the parties under this Indenture and all other documents evidencing, implementing, or securing this Indenture (collectively, the “Subordinate Bond Documents”) are and shall be subordinated in all respects to the rights and obligations of the parties to and under the FHA Loan Documents. In the event of any conflict between the provisions of (i) this Indenture or the Subordinate Bond Documents and (ii) the provisions of the FHA Loan Documents or the Program Obligations, the provisions of the FHA Loan Documents or the Program Obligations shall control. The provisions of this Section 13.14 shall control over any inconsistent provisions in this Indenture or the Subordinate Bond Documents.

(b) Any subsequent amendment to this Indenture or the Loan Agreement is subject to prior written approval of HUD (so long as the Project is subject to a mortgage insured or held by HUD). No amendment to this Indenture or the Loan Agreement shall conflict with the provisions of the Program Obligations.

(c) The Bonds are not a debt of the United States of America, HUD, FHA, GNMA or any other agency or instrumentality of the federal government, and are not guaranteed by the full faith and credit of the United States or any agency or instrumentality thereof.

(d) There is no pledge hereunder or under the Loan Agreement of the gross revenues or any of the assets of the Project.

(e) Neither a default under this Indenture nor under the Loan Agreement shall constitute a default under the FHA Loan Documents related to the Project.

(f) Nothing contained herein or in the Loan Agreement shall inhibit or impair the right of FHA to require or agree to any amendment, change or modification of any FHA Loan Documents related to the Project for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective or inconsistent provision contained therein, or in regard to matters or questions arising under said FHA Loan Documents so long as any such amendment, change or modification shall not adversely affect the payment terms of the Bonds.

(g) Neither the Issuer, the Trustee, nor any of the Holders has or shall be entitled to assert any claim against the Project, any reserves or deposits required by HUD in connection with the Project, or the rents or deposits or other income of the Project.

(h) Proceeds from any condemnation award or from the payment of a claim under any hazard insurance policy relating to the Project will not be payable to the Trustee, but will be payable in accordance with the FHA Loan Documents.

(i) Nothing contained herein or in the Loan Agreement shall require the FHA Lender to take any actions to preserve the tax exemption of the interest on the low-income housing tax credits for the Project (the “Tax Credits”) or the Bonds, or prohibits the FHA Lender from taking any action that might jeopardize the tax-exemption of the Bonds or the availability of the Tax Credits, except in strict accordance with the National Housing Act, applicable mortgage insurance regulations, the FHA Loan Documents, or, if applicable, Section 8 of the U.S. Housing Act of 1937 and the regulations thereunder.

(j) HUD requires the following be inserted into this Indenture:

“In the event of an assignment or conveyance of the mortgage to the Commissioner, subsequent to the issuance of the bonds, all money remaining in all funds and accounts other than the rebate fund, and any other funds remaining under the trust indenture after payment or provision for payment of debt service on the bonds and the fees and expenses of the credit enhancer, issuer, trustee, and other such parties unrelated to the mortgagor (other than funds originally deposited by the mortgagor or related parties on or before the date of issuance of the bonds) shall be returned to the mortgagee.”

It is understood that “mortgage” means the FHA Mortgage, “Commissioner” is defined in the FHA Loan Documents, “bonds” means the Bonds, “rebate fund” means the Rebate Fund, “the trust indenture” means this Indenture, there is no credit enhancer, “issuer” means the Issuer, “trustee” means Trustee, and “mortgagor” means the Borrower.

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**IN WITNESS WHEREOF**, the Issuer and the Trustee have caused this Trust Indenture to be executed and delivered by duly authorized officers thereof as of the day and year first written above.

**CITY OF BROOKLYN PARK, MINNESOTA**

By: \_\_\_\_\_  
Its: Mayor

By: \_\_\_\_\_  
Its: City Manager

**U.S. BANK NATIONAL ASSOCIATION,**  
as Trustee and Registrar of the Bonds

By \_\_\_\_\_  
Authorized Officer

[Signature page to Trust Indenture]

**EXHIBIT A**  
**BOND FORM**

UNITED STATES OF AMERICA  
STATE OF MINNESOTA

No. R-1

[\$8,540,000]

CITY OF BROOKLYN PARK, MINNESOTA  
MULTIFAMILY HOUSING REVENUE REFUNDING BONDS  
(AMORCE I LIMITED PARTNERSHIP PROJECT), SERIES 2019A

<u>Interest Rate</u>	<u>Maturity</u>	<u>Date of Original Issue</u>	<u>CUSIP Number</u>
[__]%	January 1, 2022	August [__], 2019	[_____]

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: [\_\_\_\_\_] AND 00/100 DOLLARS

INITIAL MANDATORY TENDER DATE: January 1, 2021

The City of Brooklyn Park, Minnesota, a home rule charter city and political subdivision organized under its charter and the laws of the State of Minnesota (the “Issuer”), for value received, promises to pay to the Registered Owner specified above or registered assigns, but solely from the sources and in the manner referred to herein, the principal amount on the maturity date specified above (subject to optional redemption after the Mandatory Tender Date as set forth herein), which shall be equal to \$[8,540,000], and to pay from those sources interest thereon at the aforesaid interest rate on (a) each January 1 and July 1, commencing January 1, 2020, (b) any date the Bonds are called for redemption prior to maturity, (c) each Mandatory Tender Date, (d) the Maturity Date, and (e) the date of acceleration of the Bonds (each an “Interest Payment Date”) until the principal amount is paid or duly provided for. This Bond will bear interest from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from its date of delivery. Any capitalized terms not defined herein shall have the meanings given to them in the Indenture (hereinafter described).

This Bond shall bear interest during each Interest Period at a rate per annum equal to the Interest Rate. Interest on the Bonds shall be calculated on the basis of a 360–day year consisting of twelve 30–day months, for the actual number of days elapsed.

For purposes of calculating such interest:

“Interest Period” means, initially, the period from the Closing Date to and including December 31, 2019, and thereafter, the period commencing on each succeeding Interest Payment Date and ending on the last day of that month preceding the next Interest Payment Date.

“Interest Rate” means [\_\_\_]% to but not including the Initial Mandatory Tender Date and thereafter, the applicable Remarketing Rate.

The principal of this Bond is payable upon presentation and surrender hereof at the designated corporate trust office of the trustee, presently U.S. Bank National Association in Saint Paul, Minnesota (the “Trustee”). Interest is payable on each Interest Payment Date by check or draft mailed to the person in whose name this Bond (or one or more predecessor bonds) is registered (the “Holder”) at the close of business on the 15th day of the calendar month next preceding that Interest Payment Date (the “Regular Record Date”) on the registration books for this issue maintained by the Trustee, as Registrar, at the address appearing therein. Any interest which is not timely paid or duly provided for shall cease to be payable to the Holder hereof (or of one or more predecessor bonds) as of the Regular Record Date, and shall be payable to the Holder hereof (or of one or more predecessor bonds) at the close of business on a Special Record Date to be fixed by the Trustee for the payment of that overdue interest. Notice of the Special Record Date shall be mailed to Holders not less than 10 days prior thereto. The principal of and interest on this Bond are payable in lawful money of the United States of America, without deduction for the services of the paying agent. While the Bonds are held in a book-entry system and in certain other circumstances, all as provided in the Indenture, principal of and interest on this Bond is required to be paid by wire transfer or other arrangement, other than any payment of the entire unpaid principal amount hereof.

THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE TRUST ESTATE (AS DEFINED IN THE INDENTURE) PLEDGED UNDER THE INDENTURE AND NOT FROM ANY OTHER REVENUES, FUNDS OR ASSETS OF THE ISSUER. THE BONDS ARE NOT GENERAL OBLIGATIONS, DEBT OR BONDED INDEBTEDNESS OF THE ISSUER OR THE STATE OF MINNESOTA (THE “STATE”) OR ANY POLITICAL SUBDIVISION THEREOF, AND THE HOLDER THEREOF DOES NOT HAVE THE RIGHT TO HAVE TAXES LEVIED BY THE ISSUER OR THE STATE OR ANY POLITICAL SUBDIVISION THEREOF FOR THE PAYMENT OF THE PRINCIPAL AND PREMIUM, IF ANY, AND INTEREST ON THE BONDS.

NO MEMBER, OFFICER, AGENT, EMPLOYEE OR ATTORNEY OF THE ISSUER, INCLUDING ANY PERSON EXECUTING THE INDENTURE OR THE BONDS, SHALL BE LIABLE PERSONALLY ON THE BONDS OR FOR ANY REASON RELATING TO THE ISSUANCE OF THE BONDS. NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THE BONDS, OR FOR ANY CLAIM BASED ON THE BONDS, OR OTHERWISE IN RESPECT OF THE BONDS, OR BASED ON OR IN RESPECT OF THE INDENTURE OR ANY SUPPLEMENTAL INDENTURE, AGAINST ANY MEMBER, OFFICER, EMPLOYEE OR AGENT, AS SUCH, OF THE ISSUER OR ANY SUCCESSOR, WHETHER BY VIRTUE OF ANY CONSTITUTION, STATUTE OR RULE OF LAW, OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, ALL SUCH LIABILITY BEING, BY THE ACCEPTANCE OF THIS BOND

AND AS PART OF THE CONSIDERATION FOR THE ISSUE OF THE BONDS, EXPRESSLY WAIVED AND RELEASED.

This Bond is one of a duly authorized issue of Multifamily Housing Revenue Refunding Bonds (Amorce I Limited Partnership Project), Series 2019A (the “Bonds”), issuable under the Trust Indenture, dated as of August 1, 2019 (the “Indenture”), between the Issuer and the Trustee, in the original aggregate principal amount of \$[8,540,000] and issued for the purpose of making a loan (the “Loan”) to the Borrower described therein (the “Borrower”) to refund in whole an obligation previously issued by the Issuer, to finance a portion of the costs of acquiring, rehabilitating, and equipping the Project, as defined in the Indenture and the Loan Agreement, dated as of even date with the Indenture (the “Loan Agreement”), between the Issuer and the Borrower. The Bonds are special, limited obligations of the Issuer, issued or to be issued under and are to be secured and entitled equally and ratably to the protection given by the Indenture. The Bonds are issued pursuant to, under authority of and in compliance with the laws of the State of Minnesota, including without limitation, Minnesota Statutes, Chapters 462C and 462A, as amended, and a resolution duly enacted by the City Council of the Issuer.

The Bonds are not subject to optional redemption prior to the Initial Mandatory Tender Date. After the Initial Mandatory Tender Date, the Bonds are subject to optional redemption prior to their stated maturity on or after the date that is 50% of the period between the most recent Mandatory Tender Date and the next succeeding Mandatory Tender Date (or, if none, the Maturity Date), at par as set forth in the Indenture. Upon presentation and surrender of the Bonds by the Holder on the date fixed for redemption, the Holder shall be paid the principal amount of the Bonds to be redeemed, plus accrued interest on such Bonds to the redemption date.

The Bonds are subject to mandatory tender prior to their stated maturity in whole on each Mandatory Tender Date. Holders will not have the right to elect to retain their Bonds. Upon presentation and surrender of the Bonds by the Holder on the date fixed for tender, the Holder shall be paid the principal amount of the Bonds to be tendered, plus accrued interest on such Bonds to the tender date.

Reference is made to the Indenture for a more complete description of the Project, the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the Issuer, the Trustee and the Holders of the Bonds, and the terms and conditions upon which the Bonds are issued and secured. Each Holder assents, by its acceptance hereof, to all of the provisions of the Indenture.

Pursuant to the Loan Agreement, the Borrower has executed and delivered to the Trustee the Borrower’s promissory note, dated of even date herewith (the “Note”), in the principal amount up to \$[8,540,000]. The Borrower is required by the Loan Agreement and the Note to make payments to the Trustee in the amounts and at the times necessary to pay the principal of and interest (the “Bond Debt Service Charges”) on the Bonds. In the Indenture, the Issuer has assigned to the Trustee, to provide for the payment of the Bond Debt Service Charges on the Bonds, the Issuer’s right, title and interest in and to the Loan Agreement, except for Unassigned Issuer’s Rights, as defined in the Loan Agreement. To secure its compliance with certain covenants in the Loan Agreement, the Borrower has executed and delivered the Regulatory Agreement between itself, the Issuer and the Trustee dated as of even date with the Indenture.

Copies of the Indenture, the Loan Agreement, the Regulatory Agreement and the Note are on file in the principal corporate trust office of the Trustee.

The Bond Debt Service Charges on the Bonds are payable solely from the Issuer Revenues, as defined and as provided in the Indenture (being, generally, the amounts payable under the Loan Agreement and the Note in repayment of the Loan, deposits to the Collateral Fund and any unexpended proceeds of the Bonds), and are an obligation of the Issuer only to the extent of the Issuer Revenues. The Bonds are not secured by an obligation or pledge of any money raised by taxation and do not represent or constitute a debt or pledge of the faith and credit of the Issuer.

The Bonds are issuable only as fully registered bonds and, except as hereinafter provided, in printed or typewritten form, registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York (“DTC”), which shall be considered to be the Holder for all purposes of the Indenture, including, without limitation, payment by the Issuer of Bond Debt Service Charges, and receipt of notices to, giving of consents by and exercise of rights of, Holders. There shall be a single Bond representing each maturity, and all Bonds shall be immobilized in the custody of DTC with the owners of beneficial interests in those Bonds (the “book-entry interests”) having no right to receive from the Issuer Bonds in the form of physical securities or certificates. Ownership of book-entry interests in the Bonds shall be shown by book entry on the system maintained and operated by DTC, its participants (the “Participants”) and certain persons acting through the Participants, and transfers of ownership of book-entry interests shall be made only by that book-entry system, the Issuer and the Trustee having no responsibility therefor. DTC is to maintain records of the positions of Participants in the Bonds, and the Participants and persons acting through Participants are to maintain records of the purchasers and owners of book-entry interests in the Bonds. The Bonds as such shall not be transferable or exchangeable, except for transfer to another Depository (as defined in the Indenture) or to another nominee of a Depository, without further action by the Issuer and otherwise at the expense of the Borrower.

If any Depository determines not to continue to act as a Depository for the Bonds for use in a book-entry system, the Issuer may attempt to have established a securities depository/book-entry system relationship with another qualified Depository under the Indenture. If the Issuer does not or is unable to do so, the Issuer and the Trustee, after the Trustee has made provision for notification of the owners of book-entry interests by the then Depository, shall permit withdrawal of the Bonds from the Depository, and authenticate and deliver Bond certificates in fully registered form (in denominations of \$5,000, or any integral multiple thereof) to the assignees of the Depository or its nominee, all at the cost and expense (including costs of printing or otherwise preparing and delivering replacement Bond certificates) of those persons requesting such authentication and delivery, if the event is not the result of Issuer action or inaction (including action at the request of the Borrower).

The Indenture permits certain amendments or supplements to the Indenture, the Loan Agreement, the Regulatory Agreement and the Note not prejudicial to the Holders to be made without the consent of or notice to the Holders, and certain other amendments or supplements thereto to be made with the consent of the Holders of not less than a majority in aggregate principal amount of the Bonds then outstanding.

The Holder of each Bond has only those remedies provided in the Indenture.

The Bonds shall not constitute the personal obligation, either jointly or severally, of the members of the City Council of the Issuer or of any other officer of the Issuer. No recourse shall be had for the payment of the Bonds against any elected or appointed officer, employee or agent of the Issuer, and no elected or appointed officer, employee or monetary liability arising out the Issuer's obligations under the Bonds, or in connection with any covenant, representation or warranty made by the Issuer.

This Bond shall not be entitled to any security or benefit under the Indenture or be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed.

It is certified and recited that there have been performed and have happened in regular and due form, as required by law, all acts and conditions necessary to be done or performed by the Issuer or to have happened (i) precedent to and in the issuing of the Bonds in order to make them legal, valid and binding special, limited obligations of the Issuer, and (ii) precedent to and in the execution and delivery of the Indenture and the Loan Agreement; that payment in full for the Bonds has been received; and that the Bonds do not exceed or violate any constitutional or statutory limitation.

This Bond shall not be entitled to any security or benefit under the Indenture or be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed.

IN WITNESS WHEREOF, the City of Brooklyn Park, Minnesota, by its governing body, has caused this Bond to be executed in its name by the facsimile signature of its duly authorized officials and by the manual signature of a Responsible Agent of the Trustee acting as authenticating agent.

**CITY OF BROOKLYN PARK, MINNESOTA**

By: \_\_\_\_\_  
Its: Mayor

By: \_\_\_\_\_  
Its: City Manager

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds described in the within-mentioned Indenture.

Date of Registration and Authentication: August [\_\_], 2019.

U.S. BANK NATIONAL ASSOCIATION, Trustee

By: \_\_\_\_\_  
Authorized Officer

### ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within Bond and irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer that Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Notice: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatsoever.

Signature Guaranteed:

\_\_\_\_\_  
Signature guarantee shall be made by a guarantor institution participating in the Securities Transfer Agent Medallion Program or in such other guarantee program acceptable to the Registrar.

Please insert social security number or other tax identification number of transferee

\_\_\_\_\_

Unless this certificate is presented by an authorized representative of The Depository Trust Company (55 Water Street, New York, New York) to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

**EXHIBIT B**

**Notice of Mandatory Tender  
To the Holders of**

**[\$8,540,000]  
City of Brooklyn Park, Minnesota  
Multifamily Housing Revenue Refunding Bonds  
(Amorce I Limited Partnership Project)  
Series 2019A**

CUSIP Number: [\_\_\_\_\_]  
Interest Rate: [\_\_\_]%  
Maturity Date: January 1, 2022  
Mandatory Tender Date: January 1, 2021  
Principal Amount: [\$8,540,000]

**NOTICE IS HEREBY GIVEN** that all bonds referenced above that are outstanding (the “Bonds”) are subject to mandatory tender for purchase on January 1, 2021 (the “Mandatory Tender Date”) pursuant to the terms of the Trust Indenture (the “Indenture”) dated as of August 1, 2019 between the City of Brooklyn Park, Minnesota (the “Issuer”) and U.S. Bank National Association (the “Trustee”).

In accordance with Section 4.03 of the Indenture, the Bonds are subject to mandatory tender in whole and not in part on the Mandatory Tender Date and shall be purchased at a price equal to 100% of the principal amount of such Bonds, plus accrued interest to the Mandatory Tender Date.

No later than 12:00 Noon, local time, on the Mandatory Tender Date, the Holders shall deliver the Bonds to the Trustee. **The Holders do not have the right to elect to retain their Bonds and any Bonds not tendered will nevertheless be deemed to have been tendered and will cease to bear interest from and after the Mandatory Tender Date.**

Any capitalized terms not defined herein shall have the meanings given to them in the Indenture.

Payment of the Bonds will be made on and after the Mandatory Tender Date upon presentation to:

By Mail:

U.S. Bank National Association  
Corporate Trust Services  
P.O. Box 64111  
St. Paul, MN 55164-0111

By Hand or Overnight Mail:

U.S. Bank National Association  
Corporate Trust Services  
111 Fillmore Avenue East  
St. Paul, MN 55107

You are hereby advised that the above bonds are no longer eligible for reregistration or transfer to another owner.

Mail Date: \_\_\_\_\_

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

---

cc: Remarketing Agent

**Draft**  
**Friday, July 5, 2019**

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**LOAN AGREEMENT**

**By and Between**

**CITY OF BROOKLYN PARK, MINNESOTA,  
as Issuer**

**And**

**AMORCE I LIMITED PARTNERSHIP,  
as Borrower**

**Dated as of August 1, 2019**

**RELATING TO**

**[\$8,540,000]  
City of Brooklyn Park, Minnesota  
Multifamily Housing Revenue Refunding Bonds  
(Amorce I Limited Partnership Project)  
Series 2019A**

---

With the exception of certain reserved rights, the interest of the City of Brooklyn Park, Minnesota in this Loan Agreement has been assigned to U.S. Bank National Association, as trustee for the above-referenced bonds.

This instrument drafted by:  
Kennedy & Graven, Chartered (SEL)  
470 US Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402

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(This Index is not a part of the Loan Agreement  
but rather is for convenience of reference only.)

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## LOAN AGREEMENT

THIS LOAN AGREEMENT (the “Loan Agreement”) made and entered into as of August 1, 2019 between the City of Brooklyn Park, Minnesota, a home rule charter city and political subdivision organized under its charter and the laws of the State of Minnesota (the “Issuer” or “City”), and Amorice I Limited Partnership, a Minnesota limited partnership (the “Borrower”), under the following circumstances summarized in the following recitals (the capitalized terms not defined in the recitals and granting clauses being used therein are defined as per Article I hereof):

### RECITALS

WHEREAS, pursuant to and in accordance with the laws of the State of Minnesota (the “State”), including without limitation, Minnesota Statutes, Chapter 462C and 462A, as amended (the “Act”), the Issuer has determined to issue and sell its Multifamily Housing Revenue Refunding Bonds (Amorice I Limited Partnership Project), Series 2019A, in the original aggregate principal amount of \$[8,540,000] (the “Bonds”), and to loan the proceeds to be derived from the sale thereof to the Borrower to refund the outstanding Multifamily Housing Revenue Note (Amorice I Limited Partnership Project), Series 2017, dated May 9, 2017 (the “Prior Note”), issued by the Issuer in the original aggregate principal amount of \$15,000,000 to finance the acquisition and rehabilitation of 170 units of multifamily rental apartments, and facilities functionally related and subordinate thereto, commonly known as Brooks Landing Apartments (“Brooks Landing”) and Brook Gardens Apartments and Townhomes (“Brook Gardens”), located at 5825 74th Avenue North and 5550 69th Avenue North, respectively, in the City (the “Project”); and

WHEREAS, the Borrower and the Issuer each have full right and lawful authority to enter into this Loan Agreement and to perform and observe the provisions hereof on their respective parts to be performed and observed.

NOW THEREFORE, in consideration of the premises and the mutual representations and agreements hereinafter contained, the Issuer and the Borrower agree as follows (provided that any obligation of the Issuer created by or arising out of this Loan Agreement shall never constitute a general debt of the Issuer or give rise to any pecuniary liability of the Issuer but shall be payable solely out of Issuer Revenues):

## ARTICLE I

### DEFINITIONS

#### **Section 1.1 Use of Defined Terms**

In addition to the words and terms defined elsewhere in this Loan Agreement, the words and terms in this Loan Agreement shall have the meanings set forth in the Trust Indenture (the “Indenture”), dated as of the date of this Loan Agreement, between the Issuer and U.S. Bank National Association, as Trustee.

#### **Section 1.2 Interpretation**

Any reference herein to the Issuer, its City Council, or to any member or officer of either includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State or the Act, or to a section, provision or chapter of the Minnesota Statutes or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision, if it constitutes in any way an impairment of the rights or obligations of the Issuer, the Holders, the Trustee or the Borrower under this Loan Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder” and similar terms refer to this Loan Agreement; and the term “hereafter” means after, and the term “heretofore” means before, the date of delivery of the Bonds. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

#### **Section 1.3 Captions and Headings**

The captions and headings in this Loan Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

## ARTICLE II

### REPRESENTATIONS AND COVENANTS

#### **Section 2.1 Representations of the Issuer**

(a) The Issuer is a home rule charter city and political subdivision organized under its charter and the laws of the State of Minnesota and is authorized to issue the Bonds to finance the Project pursuant to the Act.

(b) To the undersigned's actual knowledge, without inquiry or investigation, there is no pending or threatened suit, action, or proceeding against the Issuer before any court, arbitrator, administrative agency, or other governmental authority that challenges the Issuer's execution and delivery of the Bonds, the Indenture, or the Loan Agreement.

(c) To the actual knowledge of the undersigned, without inquiry or investigation, the execution and delivery of the Bonds, the Indenture, the Regulatory Agreement and the Loan Agreement will not constitute a breach of or default under any existing (i) provision of any special legislative act or charter provision relating to the establishment of the Issuer, or (ii) agreement, indenture, mortgage, lease, or other instrument to which the Issuer is a party or by which it is bound.

(d) No proceeding of the Issuer for the issuance, execution, or delivery of the Bonds, the Indenture or the Loan Agreement has been repealed, rescinded, amended or revoked.

#### **Section 2.2 Representations and Covenants of the Borrower**

The Borrower represents, warrants and covenants that:

(a) The Borrower is a Minnesota limited partnership duly organized under the laws of the State, and is authorized to conduct its business in the State.

(b) The Borrower has full power and authority to execute, deliver and perform this Loan Agreement, the Note, the Tax Certificate and the Regulatory Agreement (collectively, the "Borrower Documents") and to enter into and carry out the transactions on its part contemplated by those documents. The execution, delivery and performance by it of the Borrower Documents do not, and will not, violate any provision of law applicable to the Borrower and do not, and will not, conflict with or result in a default under any agreement or instrument to which the Borrower is a party or by which it is bound. The Borrower Documents have, by proper action, been duly authorized, executed and delivered by the Borrower and all steps necessary have been taken to constitute the Borrower Documents valid and binding obligations of the Borrower.

(c) The provision of financial assistance to be made available to it under this Loan Agreement and the commitments therefor made by the Issuer have induced the Borrower to undertake the transactions contemplated by this Loan Agreement.

(d) The Borrower presently intends to use or operate the Project in a manner consistent with the Act and in accordance with the Regulatory Agreement and knows of no reason why the

Project will not be so operated. If, in the future, there is a cessation of that operation, it will use its best efforts to resume that operation or accomplish an alternate use by the Borrower or others approved in writing by the Issuer which will be consistent with the Act and the Regulatory Agreement.

(e) The acquisition, rehabilitation, construction and equipping of the Project will be completed in accordance with the Plans and Specifications and the portion of the Project funded with the proceeds of the Bonds will constitute a qualified residential rental project within the meaning of Section 142(d) of the Code and will be operated and maintained in such manner as to conform in all material respects with all applicable zoning, planning, building, environmental and other applicable Governmental regulations and as to be consistent with the Act.

(f) The Project will be located entirely within the boundaries of the City.

(g) At least 95% of the net proceeds (as defined in Section 150 of the Code) of the Bonds and the Multifamily Housing Revenue Refunding Note (Amorce I Limited Partnership Project), Series 2019B Note, issued by the Issuer in the original aggregate principal amount of \$[5,250,000] (the "Series 2019B Note," and collectively with the Bonds, the "Combined Bonds") will be used to provide a "qualified residential rental project" (as defined in Section 142(d) of the Code), and the Borrower will not request or authorize any disbursement from the Project Fund pursuant to Section 3.4 hereof, which, if paid, would result in less than 95% of the net proceeds of the Combined Bonds being so used.

(h) The costs of issuance financed by the Combined Bonds will not exceed 2% of the proceeds (within the meaning of Section 147(g) of the Code) of the Combined Bonds, and the Borrower will not request or authorize any disbursement from the Project Fund pursuant to Section 3.4 hereof or otherwise, which, if paid, would result in more than 2% of the proceeds of the Combined Bonds being so used. Except as permitted by Treasury Regulations 1.148-6(d)(3)(ii), none of the proceeds of the Combined Bonds will be used for working capital purposes.

(i) Except for the unspent proceeds of the Prior Note, which become transferred proceeds of the Combined Bonds upon redemption of the Prior Note, used for costs of issuance in accordance with paragraph (h) above, if any, such proceeds shall be used exclusively to pay costs that (i) are (A) capital expenditures (as defined in Section 1.150-1(a) of the Code's regulations) and (B) not made for the acquisition of existing property, to the extent prohibited in Section 147(d) of the Code, and (ii) are made exclusively with respect to a "qualified residential rental project" within the meaning of Section 142(d) of the Code so that the Project and the land on which it is located will have been financed 50% or more by the proceeds of the Combined Bonds for the purpose of complying with Section 42(h)(4)(B) of the Code.

(j) Upon the execution and delivery thereof by the other parties thereto, each of the Borrower Documents will constitute valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws or judicial decisions affecting creditors' rights generally and by judicial discretion in the exercise of equitable remedies.

(k) The Borrower acknowledges, represents and warrants that it understands the nature and structure of the Project; that it is familiar with the provisions of all of the documents and instruments relating to the financing of the Project to which it is a party; that it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project; and that it has not relied on the Issuer for any guidance or expertise in analyzing the financial or other consequences of such financing transactions or otherwise relied on the Issuer in any manner except to issue the Bonds in order to provide funds for the Loan.

(l) The Borrower intends to hold the Project for its own account, has no current plans to sell and has not entered into any agreement to sell any of the units that comprise the Project. It is hereby acknowledged, however, that the Borrower's partnership agreement may provide for certain rights of the General Partner or an Affiliate to acquire the Project, and for the possible acquisition of the Project following the fifteen year tax credit compliance period as identified in the Borrower's partnership agreement, and those provisions shall not result in a breach of this Section 2.2(l).

(m) The Borrower shall use its best efforts to cause there to be deposited from time to time in the Collateral Fund, Available Money in such amount and at such times as may be necessary to allow the Trustee to disburse funds from the Series 2017 Account of the Project Fund pursuant to Section 5.03 of the Indenture upon the Trustee's receipt of a Disbursement Request from the Borrower to pay Project Costs.

(n) In the event the proceeds of the Combined Bonds are not sufficient to refund the Prior Note, the transferred proceeds of which are to be applied to complete the acquisition, rehabilitation, construction, equipping and improving of the Project, and the payment of all costs of issuance of the Combined Bonds, the Borrower will furnish any additional money from any source determined by the Borrower as necessary to refund the Prior Note, complete the acquisition, rehabilitation, construction, equipping and improving of the Project, and pay all costs of issuance of the Combined Bonds.

(o) Less than 25% of the proceeds of the Combined Bonds will be used to pay or reimburse the Borrower for the cost of land or any interest therein.

(p) The rehabilitation expenditures, within the meaning of Section 147(d) of the Code, with respect to the Project equal or exceed 15% of the portion of the cost of acquiring the Project financed with the Combined Bonds (which include transferred proceeds of the Prior Note).

(q) The Borrower has not knowingly taken or permitted to be taken and will not knowingly take or permit to be taken any action which would have the effect, directly or indirectly, of causing interest on any of the Bonds to be included in the gross income of the owners thereof for purposes of federal income taxation.

(r) The Borrower shall not take, or knowingly permit or suffer to be taken by the Trustee or any party acting on its behalf, any action with respect to the proceeds of the Combined Bonds which if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Combined Bonds would have

caused the Combined Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code.

The Borrower acknowledges that the representations and covenants herein made by the Borrower have been expressly and specifically relied upon by the Issuer in determining to make the Loan to the Borrower and the Loan would not have been made but for such representations and covenants.

(The remainder of this page is intentionally left blank.)

## ARTICLE III

### COMPLETION OF THE PROJECT; ISSUANCE OF THE BONDS

#### **Section 3.1 Acquisition, Rehabilitation, Construction, Equipment and Improvement**

The Borrower (a) has acquired or is in the process of acquiring the Project site and shall rehabilitate, construct, equip, and improve the Project with all reasonable dispatch and in substantial accordance with the Plans and Specifications, (b) shall pay when due all fees, costs and expenses incurred in connection with that acquisition, rehabilitation, construction, equipping and improving from funds made available therefor in accordance with this Loan Agreement or otherwise, except to the extent being contested in good faith, and (c) shall ask, demand, sue for, levy, recover and receive all those sums of money, debts and other demands whatsoever which may be due, owing and payable under the terms of any contract, order, receipt, writing and instruction in connection with the acquisition, rehabilitation, construction and equipping of the Project, and shall enforce the provisions of any contract, agreement, obligation, bond or other performance security with respect thereto. It is understood that the Project is that of the Borrower and any contracts made by the Borrower with respect thereto, whether acquisition contracts, construction contracts or otherwise, or any work to be done by the Borrower on the Project are made or done by the Borrower in its own behalf and not as agent or contractor for the Issuer. The Borrower agrees that it will compensate all workers employed in the rehabilitation and improvement of the Project as required by law.

#### **Section 3.2 Plans and Specifications**

The Borrower may revise the Plans and Specifications from time to time, provided that no revision shall be made which would change the Project Purposes to purposes other than those permitted by the Act and the Regulatory Agreement.

#### **Section 3.3 Issuance of the Bonds; Application of Proceeds**

To provide funds to make the Loan for purposes of assisting in paying the Project Costs, the Issuer will issue, sell and deliver the Bonds to the Underwriter. The Bonds will be issued pursuant to the Indenture in the aggregate principal amount, will bear interest, will mature and will be subject to redemption, mandatory tender and remarketing as set forth therein. The Borrower hereby approves the terms and conditions of the Indenture and the Bonds, and of the terms and conditions under which the Bonds will be issued, sold and delivered.

The proceeds from the sale of the Bonds in the amount of \$[8,540,000] shall be loaned to the Borrower and paid over to the Trustee for the benefit of the Borrower and the Holders of the Bonds. The proceeds of the sale of the Bonds (including without limitation, premium, if any, and interest accrued thereon) in the amount of \$[8,540,000] shall be deposited by the Trustee on the Closing Date to the Series 2019A Account of the Project Fund and then used to redeem the Prior Note, the unspent proceeds of which will be deposited in the Series 2017 Account of the Project Fund. Pending disbursement pursuant to Section 3.4 hereof, the proceeds of the Bonds, including any transferred proceeds, deposited in the Project Fund, together with any investment earnings

thereon, shall constitute a part of the Issuer Revenues assigned by the Issuer to the Trustee as security for the payment of Bond Debt Service Charges as provided in the Indenture.

### **Section 3.4 Disbursements from the Project Fund**

Subject to the provisions below and so long as no Event of Default hereunder has occurred and is continuing for which the Loan Payments and principal amount of the Bonds has been declared to be immediately due and payable pursuant to Section 7.2 hereof and Section 7.03 of the Indenture, respectively, disbursements from the Series 2017 Account of the Project Fund shall be made only to pay any of the following Project Costs:

(a) Costs incurred directly or indirectly for or in connection with the acquisition, rehabilitation, construction and equipping of the Project, including costs incurred in respect of the Project for preliminary planning and studies; architectural, legal, engineering, accounting, consulting, supervisory and other services; labor, services and materials; and recording of documents and title work.

(b) Premiums attributable to any surety bonds and insurance required to be taken out and maintained during the Construction Period with respect to the Project.

(c) Taxes, assessments and other governmental charges in respect of the Project that may become due and payable during the Construction Period.

(d) Costs incurred directly or indirectly in seeking to enforce any remedy against any contractor or subcontractor in respect of any actual or claimed default under any contract relating to the Project.

(e) Payment of the outstanding principal balance of and accrued interest on the Prior Note.

(f) Any other costs, expenses, fees and charges properly chargeable to the cost of acquisition, rehabilitation, construction and equipping of the Project.

(g) Payment of interest on the Bonds during the Construction Period.

(h) Payments to the Rebate Fund.

Any disbursements from the Series 2017 Account of the Project Fund shall be made by the Trustee only as permitted pursuant to Section 5.03 of the Indenture and upon the written request of the Borrower in a Disbursement Request in compliance with the provisions hereof and of the Disbursing Agreement. No disbursement shall be made by the Trustee upon the basis of any such Disbursement Request except upon satisfaction of the following conditions and pursuant to the following procedures:

(a) An executed Certificate of the FHA Lender substantially in the form attached hereto as **Exhibit C**, or an executed Certificate of the Borrower substantially in the form attached hereto as **Exhibit D**, related to the deposit of Available Money into the Collateral Fund for the applicable Disbursement Request.

(b) All Loan Payments that are then due shall have been paid.

Each Disbursement Request for a disbursement of funds from the Series 2017 Account of the Project Fund shall be made in accordance with the Disbursing Agreement and shall be deemed a representation by the Borrower that:

(a) All items for which disbursement is requested thereunder either (i) are presently due and payable, constitute Project Costs properly incurred by the Borrower in connection with the Project being financed with the proceeds of the Loan, or are reimbursable Project Costs properly chargeable against the Loan; or (ii) are to be deposited to an escrow fund to be disbursed therefrom solely for Project Costs properly incurred by the Borrower in connection with the Project; and in each case none of the items for which disbursement is requested has formed the basis for any disbursement heretofore made from said Series 2017 Account of the Project Fund.

(b) Each such item is or was necessary in connection with the acquisition, and rehabilitation of the Dwelling Units (as defined in the Regulatory Agreement) of the Project.

(c) The costs specified in the Disbursement Request, when added to all previous disbursements under the Loan, will result in at least 95% of the aggregate amount of all disbursements having been used to pay costs properly chargeable to the capital account of a qualified residential rental project within the meaning of Section 142(d) of the Code and functionally related and subordinate property thereto.

(d) The costs specified in the Disbursement Request, when added to all previous and all proposed future disbursements under the Loan, will result in the rehabilitation expenditures, within the meaning of Section 147(d) of the Code, with respect to the Project equaling or exceeding 15% of the portion of the cost of acquiring the Project financed with proceeds of the Combined Bonds (which include transferred proceeds of the Prior Note).

(e) To the knowledge of the Borrower, there is no current or existing event of default pursuant to the terms of the Loan Agreement or the Regulatory Agreement and no event exists which by notice or passage of time or both would constitute an event of default under any of the foregoing documents.

(f) No representation or warranty of the Borrower contained in the Loan Agreement or the Regulatory Agreement is materially incorrect or inaccurate, except as the Borrower has set forth in writing, and there has been no event of default under the terms of any of those documents and which is continuing and no event shall exist which by notice, passage of time or both would constitute an event of default under any of those documents.

(g) Each expense for which disbursement is requested was or will be paid on or after the date of issuance of the Bonds. Notwithstanding the foregoing, the Borrower may be reimbursed for Project Costs incurred prior to the Closing Date of the Bonds in accordance with Section 1.150-2 of the Code.

Any money in the Series 2017 Account of the Project Fund remaining after the Completion Date and payment, or provision for payment, in full of the Project Costs, at the direction of the

Authorized Borrower Representative, promptly shall be paid into the Bond Fund for payment of Bond Debt Service Charges.

All payments made from the Series 2017 Account of the Project Fund shall be presumed by the Trustee to be made for the purposes certified in said written requests, and the Trustee shall not be required to see to the application of any payments made from the Series 2017 Account of the Project Fund or to inquire into the purposes for which withdrawals are being made from the Series 2017 Account of the Project Fund. The Trustee shall not be bound to make an investigation into the facts or matters stated in any written request. The Trustee shall not be responsible for determining whether the funds on hand in the Series 2017 Account of the Project Fund are sufficient to complete the Project. The Trustee shall have no responsibility whatsoever to disburse or transfer funds absent written instructions from the Borrower.

### **Section 3.5 FHA Lender Funds**

(a) The Borrower hereby acknowledges that the FHA Lender has determined to fund the FHA Insured Mortgage Loan, on the condition that the FHA Lender originate and service the FHA Insured Mortgage Loan in accordance with the FHA Loan Documents, the FHA Insurance Regulations and the GNMA Regulations, and the FHA Lender has further agreed pursuant to the related FHA Loan Documents to issue the GNMA Securities in accordance with the GNMA Regulations, based on and backed by the FHA Insured Mortgage Loan.

(b) The Borrower will direct the FHA Lender to deliver or cause to be delivered to the Trustee the FHA Lender Funds upon FHA Lender's receipt and approval of a requisition from the Borrower requesting an advance under the FHA Insured Mortgage Loan for payments of Project Costs.

(c) The Borrower agrees to pay to the FHA Lender all amounts when due under the FHA Note and to abide by the provisions of the FHA Loan Documents and the GNMA Documents.

(d) Pursuant to the Disbursing Agreement, the Trustee shall, upon receipt from the FHA Lender of (i) the FHA Lender Funds, and (ii) an approved requisition, disburse amounts from the Series 2017 Account of the Project Fund, in the exact same amount of the FHA Lender Funds received by the Trustee from the FHA Lender, to the Borrower, or to the title company under the Disbursing Agreement by or at the direction of the FHA Lender for application to the payment of the Project Costs set forth in the approved requisition.

(e) The Borrower acknowledges that, to the extent that an advance of FHA Lender Funds as requested by the Borrower is approved by FHA Lender, the Borrower has directed the FHA Lender that all funds be wired by the FHA Lender directly to the Trustee and that such funds shall be disbursed and invested and applied by the Trustee in accordance with the provisions of Section 5.03 of the Indenture.

### **Section 3.6 Borrower Required to Pay Costs in Event Project Fund Insufficient**

If money in the Series 2017 Account of the Project Fund is not sufficient to pay all Project Costs, the Borrower, nonetheless, will complete the Project in substantial accordance with the Plans and Specifications and shall pay all such additional Project Costs from its own funds (or

from other public or private financing sources available to the Borrower). The Borrower shall pay all costs of issuing the Bonds. The Borrower shall not be entitled to any reimbursement for any such additional Project Costs or payment of issuance costs from the Issuer, the Trustee or any Holder; nor shall it be entitled to any abatement, diminution or postponement of the Loan Payments.

**Section 3.7 Completion Date**

The Borrower shall notify the Issuer and the Trustee of the Completion Date by the delivery of a Completion Certificate signed by the Authorized Borrower Representative substantially in the form of **Exhibit B** attached hereto. The Completion Certificate shall be delivered as promptly as practicable after the occurrence of the events and conditions referred to in paragraphs (a) through (d) of the Completion Certificate.

**Section 3.8 Investment of Fund Money**

At the written direction of the Borrower, any money held as part of the Bond Fund, the Project Fund, the Collateral Fund and the Rebate Fund shall be invested or reinvested by the Trustee in Eligible Investments as provided in Section 5.05 of the Indenture. The Borrower covenants that it will restrict that investment and reinvestment and the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time of delivery of and payment for the Bonds or subsequent intentional acts, so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code. No provision of this Loan Agreement shall be construed to impose upon the Trustee any obligation or responsibility for compliance with arbitrage regulations.

**Section 3.9 Rebate Fund**

The Borrower agrees to make such payments to the Trustee as are required of it under Section 5.09 of the Indenture as well as the expenses of any Independent certified public accounting firm or qualified rebate analyst engaged in accordance with that Section. The obligation of the Borrower to make such payments shall remain in effect and be binding upon the Borrower notwithstanding the release and discharge of the Indenture.

**Section 3.10 Remarketing of Bonds**

The Borrower is hereby granted the right to (a) request a remarketing of the Bonds in the manner and to the extent set forth in Section 4.05 of the Indenture and (ii) with the written consent of the Remarketing Agent (which consent shall not be unreasonably withheld), designate the length of the Remarketing Period and the related Mandatory Tender Date in the manner and to the extent set forth in Sections 4.03 and 4.05 of the Indenture.

## ARTICLE IV

### LOAN BY ISSUER; REPAYMENT OF THE LOAN; LOAN PAYMENTS AND ADDITIONAL PAYMENTS

#### **Section 4.1 Loan Repayment; Delivery of Note**

Upon the terms and conditions of this Loan Agreement and the Note, the Issuer will make the Loan to the Borrower. In consideration of and in repayment of the Loan, the Borrower shall deliver or cause to be delivered to the Trustee on or before each Loan Payment Date, Loan Payments, equal to the amount necessary to pay Bond Debt Service Charges due on the next Bond Payment Date for the Bonds. All such Loan Payments shall be paid to the Trustee in accordance with the terms of the Note for the account of the Issuer and shall be held and disbursed in accordance with the provisions of the Indenture and this Loan Agreement.

The Borrower shall be entitled to a credit against the Loan Payments required to be made hereunder, on any date, equal to the amounts, if any, transferred by the Trustee from the Interest Account of the Bond Fund, the Project Fund or the Collateral Fund on such date for the payment of Bond Debt Service Charges.

To secure the Borrower's performance of its obligations under this Loan Agreement, the Borrower shall execute and deliver, concurrently with the issuance and delivery of the Bonds, the Note and the Regulatory Agreement.

Upon payment in full of the Bond Debt Service Charges on any or all of the Bonds, in accordance with the Indenture, whether at maturity, upon acceleration or otherwise, or upon provision for the payment of all other obligations herein and therein having been made in accordance with the provisions of the Indenture, (i) if with respect to less than all of the Bonds then outstanding, an appropriate notation shall be endorsed on the Note evidencing the date and amount of the principal payment (or prepayment) equal to the Bonds so paid, or with respect to which provision for payment has been made, and (ii) with respect to all of the Bonds then outstanding, the Note shall be deemed fully paid, the obligations of the Borrower shall be terminated, and the Note shall be surrendered by the Trustee to the Borrower for cancellation. Unless the Borrower is entitled to a credit under express terms of this Loan Agreement or the Note, all payments on the Note shall be in the full amount required thereunder.

The Borrower and the Issuer each acknowledge that neither the Borrower nor the Issuer has any interest in the Bond Fund or the Collateral Fund and any money deposited therein shall be in the custody of and held by the Trustee in trust for the benefit of the Holders.

#### **Section 4.2 Additional Payments**

The Borrower shall pay to the Issuer or the Trustee, as the case may be, as Additional Payments hereunder the following:

(a) To the Issuer or the Trustee, as the case may be, whether or not an Event of Default has occurred hereunder, as payment for or reimbursement or prepayment of any and all costs, expenses, and liabilities (i) incurred or paid by the Issuer or the Trustee, as the case may be, in

satisfaction of any obligations of the Borrower hereunder not performed by the Borrower in accordance with the provisions hereof, (ii) incurred as a result of a request by the Borrower or of a requirement of any Borrower Document or the Indenture and not otherwise required to be paid by the Borrower under this Loan Agreement, or (iii) incurred in the defense of any action or proceeding with respect to the Project or any Borrower Document, or in enforcing any Borrower Document, or arising out of or based upon any other document related to the issuance of the Bonds, or (iv) any rebate amount required with respect to the Bonds as required by the applicable Indenture or the Tax Certificate.

(b) To the applicable party, as payment for or reimbursement or prepayment of any Ordinary Services and Ordinary Expenses and Extraordinary Services and Extraordinary Expenses of the Trustee as trustee, registrar, authenticating agent and paying agent, and of any other paying agent, authenticating agent, and registrar on the Bonds under the Indenture, all as provided in the Indenture, as and when the same become due; provided that the Borrower may, without creating an Event of Default hereunder, contest in good faith the necessity for any Extraordinary Services and Extraordinary Expenses and the amount of any such Ordinary Services, Ordinary Expenses, Extraordinary Services or Extraordinary Expenses; provided that fees for Ordinary Services provided for by the respective letter agreements agreed to by the Borrower and the Trustee, the Registrar, and any Paying Agents and Authenticating Agents, respectively, shall be considered to be customary.

(c) All Extension Payments and other sums required under Section 4.05 of the Indenture in order to revise or extend the Mandatory Tender Date or remarket the Bonds, and the Borrower further agrees to execute any and all certificates required by the Issuer, the Trustee or the Remarketing Agent in order to effectuate such revision, extension or remarketing.

(d) To the Remarketing Agent, the Remarketing Agent Fee and any Remarketing Expenses.

(e) To the Issuer in immediately available funds: upon demand, for all costs and expenses, including without limitation, attorneys' fees, paid or incurred by the Issuer in connection with (i) the discussion, negotiation, preparation, approval, execution and delivery of the Bonds, the Indenture, the Regulatory Agreement, this Loan Agreement, and the documents and instruments related hereto or thereto; (ii) any amendments or modifications to any of the foregoing documents, instruments or agreements and the discussion, negotiation, preparation, approval, execution and delivery of any and all documents necessary or desirable to effect such amendments or modifications; (iii) the servicing and administration of the Loan during the term hereof or thereafter; and (iv) the enforcement by the Issuer during the term hereof or thereafter of any of the rights or remedies of the Issuer hereunder or under the foregoing documents, or any document, instrument or agreement related hereto or thereto, including, without limitation, costs and expenses of collection in the Event of Default, whether or not suit is filed with respect thereto.

(f) To the Issuer in immediately available funds an upfront administrative fee equal to \$[\_\_\_\_\_] (one-half percent (0.50%) of the original aggregate principal amount of the Combined Bonds issued) payable on the Closing Date, plus an ongoing annual administrative fee equal to one-tenth percent (0.10%) of the aggregate principal amount of the Combined Bonds, payable on the first anniversary of the Closing Date and each anniversary thereafter. The administrative fees

are not pledged to payment of the Combined Bonds and may be used by the Issuer for any proper purpose.

Upon the payment, prepayment, or incurrence of any such cost, expense, or liability described in this Section by any such party, the Additional Payments in respect thereof shall be payable upon written demand to the Borrower, which demand shall be accompanied by invoices or other appropriate documentation concerning the nature, amount and incurrence of such cost, expense or liability. If the Additional Payments payable under this Section are not paid by the Borrower within 30 days of the Borrower's receipt of such demand, such Additional Payments shall bear interest from such 30th date at the Interest Rate for Advances until the amount due shall have been fully paid.

**Section 4.3 Place of Payments**

The Borrower shall make all Loan Payments directly to the Trustee at its designated corporate trust office. Additional Payments shall be made directly to the person or entity to whom or to which they are due.

**Section 4.4 Obligations Unconditional**

The obligations of the Borrower to make Loan Payments, Additional Payments and any payments required of the Borrower under Sections 5.09 and 6.03 of the Indenture shall be absolute and unconditional, and the Borrower shall make such payments without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set-off, recoupment or counterclaim which the Borrower may have or assert against the Issuer, the Trustee or any other Person; provided that the Borrower may contest in good faith the necessity for any Extraordinary Services and Extraordinary Expenses and the amount of any Ordinary Services, Ordinary Expenses, Extraordinary Services or Extraordinary Expenses.

**Section 4.5 Assignment of Loan Agreement and Issuer Revenues**

To secure the payment of Bond Debt Service Charges, the Issuer shall assign to the Trustee, by the Indenture, its rights under and interest in this Loan Agreement (except for the Unassigned Issuer's Rights) and the Note. The Borrower hereby agrees and consents to those assignments. The Issuer shall not attempt to further assign, transfer or convey its interest in the Issuer Revenues or this Loan Agreement or create any pledge or Lien of any form or nature with respect to the Issuer Revenues or Loan Payments hereunder.

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## ARTICLE V

### ADDITIONAL AGREEMENTS AND COVENANTS

#### **Section 5.1 Right of Inspection**

At all reasonable times and upon reasonable notice, the Borrower shall allow any duly authorized representative of the Issuer or the Trustee to visit and inspect the Project, to examine and make copies of and from its books of record and account, and to discuss its affairs, finances, and accounts with its officers, and shall furnish to the Issuer and the Trustee any information reasonably required regarding its business affairs and financial condition within a reasonable time after receipt of written request therefor.

#### **Section 5.2 Borrower to Maintain Its Existence; Sales of Assets or Mergers**

The Borrower shall maintain its existence, not dissolve or sell, transfer or otherwise dispose of all or substantially all of its assets, not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, and not sell or transfer the Project; provided, that it may do so if the surviving, resulting or transferee entity is other than the Borrower, it assumes in writing all of the obligations of the Borrower under this Loan Agreement and the Regulatory Agreement and it has a net worth equal to or greater than that of the Borrower immediately prior to such consolidation, merger, sale or transfer or if the Bonds are repaid in full. Nothing herein contained shall limit the rights of (i) any direct or indirect owners of interests in the Borrower to (a) transfer, convey, sell or otherwise dispose (a "Transfer") their ownership interests to any Affiliate of such owner or of any other owner of interests in the Borrower, or in connection with any estate planning, or by operation of law, or (b) make Transfers among and between themselves; (ii) Borrower to make Transfers as otherwise permitted by (or subject to the terms and conditions set forth in) the Regulatory Agreement; or (iii) the General Partner of the Borrower, the members of the General Partner, and the Borrower to pledge and assign their respective interests in the Borrower to the Subordinate Lender as security for the Series 2019B Note.

Notwithstanding anything to the contrary contained herein or in any other Subordinate Bond Document (as defined in Section 13.14 of the Indenture), and subject to the consent of HUD and the FHA Lender (each as defined in Section 1.01 of the Indenture) prior to each occurrence in accordance with the FHA Loan Documents (as defined in Section 1.01 of the Indenture), the following shall be permitted and shall not require the prior written approval of the Issuer or the Trustee, (a) the transfer by the Investor Limited Partner of its interests in Borrower in accordance with the terms of Borrower's Amended and Restated Agreement of Limited Partnership, as it may be amended from time to time (the "Partnership Agreement"), (b) the removal of the General Partner of the Borrower in accordance with the Partnership Agreement and the replacement thereof with the Investor Limited Partner or any of its affiliates, (c) the transfer of ownership interests in the Investor Limited Partner or the Special Limited Partner, (d) the transfer of the interests of the Investor Limited Partner in Borrower to Borrower's General Partner or any of its affiliates, (e) the pledge and assignment to the Subordinate Lender by the General Partner of the Borrower, the members of the General Partner and the Borrower of their respective interests in the Borrower as security for the Series 2019B Note, and the Subordinate Lender's foreclosure on any such interests

in the event of a default in connection with the Series 2019B Note, and (f) any amendment to the Partnership Agreement to memorialize the transfers or removal described above. The parties agree that this Section shall control to the extent of any conflict in any Subordinate Bond Documents.

**Section 5.3 Indemnification.**

The Borrower releases the Issuer and the Trustee from, agrees that the Issuer and the Trustee shall not be liable for, and indemnifies, defends and holds the Issuer and the Trustee harmless from and against, all liabilities, claims, costs and expenses and reasonable attorneys' fees imposed upon, incurred or asserted against the Issuer or the Trustee on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the acquisition, rehabilitation, financing, occupation, possession, management, equipping, furnishing, maintenance, operation and use of the Project or from any work or thing done in or about the Project site, or any sidewalks, passageways, driveways, curbs, vaults and vault space, streets or parking areas on the Project site or adjacent thereto; (ii) any breach or default on the part of the Borrower in the performance of any covenant or agreement of the Borrower under this Loan Agreement, the Regulatory Agreement, the Note or any related document, or arising from any act or failure to act by the Borrower, or any of its agents, contractors, servants, employees or licensees; (iii) the Borrower's failure to comply with any requirement of this Loan Agreement including the covenant in Section 5.4 hereof; (iv) any action taken or omitted to be taken by the Issuer or the Trustee under this Loan Agreement, the Indenture or the Regulatory Agreement; (v) the issuance of the Bonds; and (vi) any claim, action or proceeding brought with respect to any matter set forth in clause (i), (ii), (iii), (iv) or (v) above, provided, however, that the indemnification provided in this Section shall not apply to any matter arising or resulting from the gross negligence or willful misconduct of the party proposed to be indemnified hereunder.

The Borrower agrees to indemnify the Trustee for and to hold it harmless against all liabilities, claims, costs and expenses incurred without negligence or willful misconduct on the part of the Trustee, on account of any action taken or omitted to be taken by the Trustee in accordance with the terms of this Loan Agreement, the Bonds, the Regulatory Agreement, the Note or the Indenture or any action taken at the request of or with the consent of the Borrower, including the costs and expenses of the Trustee in defending itself against any such claim, action or proceeding brought in connection with the exercise or performance of any of its powers or duties under this Loan Agreement, the Bonds, the Indenture, the Regulatory Agreement or the Note.

In case any action or proceeding is brought against the Issuer or the Trustee in respect of which indemnity may be sought hereunder, the party seeking indemnity promptly shall give notice of that action or proceeding to the Borrower, and the Borrower upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of a party to give that notice shall not relieve the Borrower from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by the Borrower. The indemnified party shall have the right to employ separate counsel in any such action or proceedings and to participate in the defense thereof, but, unless such separate counsel is employed with the approval and consent of the Borrower, or because the indemnified party has been advised by counsel that there may be a conflict of interest between the Borrower and the indemnified party, the Borrower shall not be required to pay the fees and expenses of such separate counsel. The

Borrower shall not be liable for any settlement made without its consent, which consent shall not be unreasonably withheld, conditioned or delayed.

The indemnification set forth above is intended to and shall include the indemnification of all affected officials, directors, officers, agents, representatives and employees of the Issuer and the Trustee, respectively. That indemnification is intended to and shall be enforceable by the Issuer and the Trustee, respectively, to the full extent permitted by law.

**Section 5.4 Borrower Not to Adversely Affect Exclusion from Gross Income of Interest on Bonds**

The Borrower hereby represents that it has taken and caused to be taken, and covenants that it will take and cause to be taken, all actions that may be required of it, alone or in conjunction with the Issuer, for the interest on the Bonds to be and to remain excluded from gross income for federal income tax purposes (other than interest on the Bonds for any period during which the Bonds are held by a “substantial user” of any facility financed with the proceeds of the Bonds or a “related person,” as such terms are used in Section 147(a) of the Code), and represents that it has not taken or permitted to be taken on its behalf, and covenants that it will not take or permit to be taken on its behalf, any actions that would adversely affect such exclusion under the provisions of the Code.

**Section 5.5 Affirmative Covenants**

Unless the Issuer or the FHA Lender shall otherwise consent in writing:

(a) Maintenance of Properties. The Borrower shall maintain and preserve in good working order and condition, ordinary wear and tear and casualty loss excepted, all of its properties which are necessary or useful in the proper conduct of its business, and shall from time to time make all necessary repairs, renewals, replacements, additions and improvements to said properties. All damage to apartment units shall be repaired promptly and apartment units shall be maintained so as to be available at all times for habitation.

(b) Keeping of Records and Books of Account. The Borrower shall keep adequate records and books of account in which complete entries will be made in accordance with GAAP or indicating deviations therefrom, reflecting all financial transactions. The Borrower shall deliver to the Trustee annually, not later than 120 days following the end of the Borrower’s fiscal year, commencing with the fiscal year ending in 2019, its year-end financial statements accompanied by a written statement of the Borrower that the Borrower has not violated any of the terms, covenants or provisions of this Loan Agreement insofar as it relates to accounting matters. The Trustee shall have no duty to review or analyze any such financial statements. The Trustee shall not be deemed to have notice of any information contained therein or event of default which may be disclosed in any manner therein.

(c) Payment of Taxes, Etc. The Borrower shall promptly pay and discharge: all taxes, assessments, fees, and other Government charges or levies imposed upon it or upon any of its properties, income or profits, before the same shall become delinquent; all lawful claims of materialmen, mechanics, carriers, warehousemen, landlords and other similar Persons for labor, materials, supplies and rentals, which if unpaid might by law become a Lien upon its properties;

any Indebtedness heretofore or hereafter incurred by it when due, and discharge, perform and observe covenants, provisions and conditions to be discharged, performed and observed by it in connection therewith, or in connection with any agreement or other instrument relating thereto or in connection with any Lien existing at any time upon any of its properties; provided, however, that the Borrower shall not be required to pay any of the foregoing if (a) the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings, (b) the Borrower shall have set aside on its books adequate reserves with respect thereto and (c) the title of the Borrower to, and its right to use, its properties is not materially and adversely affected thereby. The Borrower hereby agrees that, in the event it fails to pay or cause to be paid taxes, assessments, fees and other Government charges or levies or the premium on any required insurance and such failure constitutes a default under the FHA Loan Documents, the Trustee may make such payment, but is not obligated to do so, and the Trustee shall be reimbursed by the Borrower therefor with interest on the amount so advanced at the Interest Rate for Advances as provided in Section 4.2 hereof.

(d) Insurance. The Borrower shall at all times maintain, or cause to be maintained, insurance of such types and in such amounts as required by the FHA Loan Documents.

(e) Notice of Material Litigation. The Borrower shall promptly notify the Issuer and the Trustee in writing of any litigation, arbitration proceeding or administrative investigation, inquiry or other proceeding to which it may hereafter become a party or be subject to which may result in a change in the business or assets or in the condition, financial or otherwise, of the Borrower which would materially impair the ability of the Borrower to perform this Loan Agreement, the Regulatory Agreement, the Borrower guaranties or the Note, or any other agreement or instrument herein or therein contemplated.

(f) Notice of Default. In the event that any Event of Default occurs under this Loan Agreement, the Borrower shall give prompt notice in writing of such happening to the Trustee.

(g) Performance of Contracts, Etc. Except to the extent contested in good faith, the Borrower shall perform according to and shall comply with all of its Contractual Obligations and all Requirements of Law if nonperformance thereof would result in a change in the business or assets or in the condition, financial or otherwise, of the Borrower which would materially impair the ability of the Borrower to perform this Loan Agreement, the Regulatory Agreement or the Note or any other agreement or instrument herein or therein contemplated.

(h) Notice of Other Matters. The Borrower shall promptly notify the Trustee in writing of any of the following events:

(i) Any event with respect to the business or assets or in the condition, financial or otherwise, of the Borrower which would materially impair the ability of the Borrower to perform its obligations under this Loan Agreement, the Regulatory Agreement or the Note or any other agreement or instrument herein or therein contemplated.

(ii) A default by the Borrower in any material respect under any material agreement to which the Borrower is a party or by which the Borrower or its

properties or assets may be bound which would materially impair the ability of the Borrower to repay the Loan, giving in each case the details thereof and specifying the action proposed to be taken with respect thereto.

(i) Cooperation in Perfecting Security Interests, Etc. The Borrower shall promptly perform such acts as may be necessary or advisable to perfect and maintain any Lien provided for in this Loan Agreement or in any agreement or document contemplated herein or therein, or otherwise to carry out the intent of this Loan Agreement. The Borrower shall promptly execute, deliver and perform or cause to be done, executed, delivered and performed all such documents, instruments, agreements, things and acts, including, without limitation, financing statements, continuation statements and mortgages as may be necessary or advisable to perfect or maintain a Lien on any and all assets or rights owned by the Borrower, or any interest of the Borrower therein.

(j) Environmental Matters. The Borrower will take and continue to take prompt action to remedy all environmental pollution and contamination, hazardous waste disposal and other environmental cleanup problems, if any, whether or not such cleanup problems have resulted from the order or request of a municipal, state, federal, administrative or judicial authority, or otherwise. The foregoing covenant shall not constitute or create a waiver of any rights the Borrower may have to pursue any legal rights or remedies against any third party for any environmental claims.

(k) Non-discrimination. The Borrower will not discriminate, and will require each contractor, subcontractor and commercial tenant of the Project to covenant that it will not discriminate by reason of race, creed, color, handicap, national origin or sex in the employment of any Person employed by it in connection with the Project or working in or on the Project. The Borrower will require each manager of the Project to covenant that in the leasing of the Project it will not discriminate by reason of race, creed, color, handicap, national origin or sex.

(l) Patriot Act. The Borrower covenants and agrees to provide documentation as reasonably requested or required by the Trustee to enable the Trustee to comply with the requirements of the USA Patriot Act as described in Section 13.13 of the Indenture.

#### **Section 5.6 Additional Indebtedness**

The FHA Insured Mortgage Loan, the Subordinate Loan, as evidenced by the Series 2019B Note, and any other subordinate loans from subordinate lenders consistent with the Borrower's plan of finance are all permitted Indebtedness. In addition, so long as no Event of Default or default hereunder shall have occurred and be continuing, the Borrower shall be permitted to incur any additional Indebtedness for any Project Cost or other costs associated with the Project or other obligation or payment due under this Loan Agreement, the Indenture or the Regulatory Agreement.

#### **Section 5.7 Nature of Business**

The Borrower will not change the general character of its business as conducted at the date hereof, or engage in any type of business not reasonably related to its business as normally conducted.

### **Section 5.8 Cooperation in Enforcement of Regulatory Agreement**

In order to maintain the exclusion from gross income under federal tax law of interest on the Bonds and to assure compliance with the laws of the State (including the Act), the Borrower hereby agrees that it shall, concurrently with or before the execution and delivery of the Bonds, execute and deliver and cause to be recorded the agreement defined in the Indenture as the “Regulatory Agreement.” The Borrower hereby covenants and agrees as follows:

- (a) to comply with all provisions of the Regulatory Agreement;
- (b) to advise the Issuer in writing promptly upon learning of any default with respect to the covenants, obligations and agreements of the Borrower set forth in the Regulatory Agreement;
- (c) upon written direction by the Issuer, to cooperate fully and promptly with the Issuer in enforcing the terms and provisions of the Regulatory Agreement; and
- (d) to file in accordance with the time limits established by the Regulatory Agreement all reports and certificates required thereunder, and the annual certification to the Secretary of the Treasury required by the Regulatory Agreement.

The Issuer shall not incur any liability in the event of any breach or violation of the Regulatory Agreement by the Borrower, and the Borrower agrees to indemnify the Issuer from any claim or liability for such breach pursuant to Section 5.3 hereof.

### **Section 5.9 Tax-Exempt Status of the Bonds**

(a) It is the intention of the Issuer and the Borrower that interest on the Bonds shall be and remain excludable from gross income for federal income taxation purposes, and to that end the covenants and agreements of the Borrower in this Section 5.9 are for the benefit of the owners of the Bonds and the Issuer.

(b) The Borrower covenants and agrees that it will not (i) use or permit the use of any of the funds provided by the Issuer hereunder or any other funds of the Borrower, directly or indirectly, in such manner as would, or (ii) enter into, or allow any “related person” (as defined in Section 147(a)(2) of the Code) to enter into, any arrangement, formal or informal, for the purchase of the Bonds that would, or (iii) take or omit to take any other action that would, in each case cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code.

(c) In the event that at any time the Borrower is of the opinion or becomes otherwise aware that for purposes of this Section 5.9 it is necessary to restrict or to limit the yield on the investment of any money held under the Indenture or otherwise by the Trustee, the Borrower shall determine the limitations and so instruct the Trustee in writing and cause the Trustee to comply with those limitations under the Indenture.

(d) The Borrower will take such action or actions as may be necessary to fully comply with the Tax Certificate and with Section 148 of the Code as applicable to the Bonds.

(e) The Borrower further agrees that it shall not discriminate on the basis of race, creed, color, sex, sexual preference, source of income (e.g. AFDC, SSI), physical disability, national origin or marital status in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project, to the extent required by applicable State or federal law.

(f) The Borrower further warrants and covenants that it has not executed and will not execute any other agreement, or any amendment or supplement to any other agreement, with provisions contradictory to, or in opposition to, the provisions, of this Loan Agreement and of the Regulatory Agreement, and that in any event, the requirements of this Loan Agreement and the Regulatory Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith and therewith.

(g) The Borrower will use due diligence to complete the acquisition, rehabilitation, construction, and equipping of all of the units comprising the Project and reasonably expects to fully expend the entire \$[8,540,000] principal amount of the Loan by the Initial Mandatory Tender Date.

(h) The Borrower will take such action or actions as necessary to ensure compliance with Sections 2.2(e), (g), (h), (i), (l), (o), (p), (q), and (r) hereof.

#### **Section 5.10 Useful Life**

The Borrower hereby represents and warrants that, within the meaning of Section 147(b) of the Code, the average maturity of the Bonds does not exceed 120% of the average reasonably expected economic life of the facilities being financed with the proceeds of the Bonds.

#### **Section 5.11 Federal Guarantee Prohibition**

The Borrower shall take no action, nor permit nor suffer any action to be taken if the result of the same would be to cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

#### **Section 5.12 Prohibited Facilities**

The Borrower represents and warrants that no portion of the proceeds of the Loan shall be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises, and no portion of the proceeds of the Loan shall be used for an office unless (a) the office is located on the premises of facilities constituting a portion of the Project and (b) not more than a de minimis amount of the functions to be performed at such office is not related to the day-to-day operations of the Project.

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## ARTICLE VI

### PREPAYMENT

#### **Section 6.1 Optional Prepayment**

The Note is not subject to prepayment prior to the Initial Mandatory Tender Date. The Note may be prepaid by the Borrower in whole or in part any Business Day occurring on or after the date that is 50% of the period between the most recent Mandatory Tender Date and the next succeeding Mandatory Tender Date (or, if none, the Maturity Date), and must be prepaid by the Borrower in whole as soon as practicable after the Borrower has advised the Trustee in writing that the Project is placed in service for all purposes within the meaning of Section 42 of the Code, without penalty at a prepayment price equal to the outstanding principal amount plus any unpaid accrued interest on the Note. In order to prepay the Note, the Borrower shall give the Trustee written notice at least 30 days prior to the prepayment date to effect a redemption of the Bonds pursuant to Section 4.01 of the Indenture.

#### **Section 6.2 Borrower's Obligations Upon Tender of Bonds**

If any Tendered Bond is not remarketed on any Mandatory Tender Date and a sufficient amount is not available in the Collateral Fund, the Bond Fund, and the Project Fund as provided in Section 4.03(e) of the Indenture for the purpose of paying the purchase price of such Bond, the Borrower will cause to be paid to the Trustee by the applicable times provided in the Indenture, an amount of Available Money equal to the amount by which the principal amount of all Bonds tendered and not remarketed, together with interest accrued to the Mandatory Tender Date, exceeds the amount otherwise available pursuant to Section 4.03(e) of the Indenture.

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## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

#### Section 7.1 Events of Default

Each of the following shall be an Event of Default:

(a) The Borrower shall fail to pay any Loan Payment on or prior to the date on which that Loan Payment is due and payable or within the Loan Payment Cure Period;

(b) The Borrower shall fail to observe and perform any other agreement, term or condition contained in this Loan Agreement and the continuation of such failure for a period of 30 days after written notice thereof shall have been given to the Borrower and the Investor Limited Partner by the Issuer or the Trustee, or for such longer period as the Issuer and the Trustee may agree to in writing; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the Borrower institutes curative action within the applicable period and diligently pursues that action to completion, which must be resolved within 180 days after the aforementioned notice;

(c) The Borrower shall: (i) admit in writing its inability to pay its debts generally as they become due; (ii) have an order for relief entered in any case commenced by or against it under the federal bankruptcy laws, as now or hereafter in effect, which is not dismissed within 90 days; (iii) voluntarily commence a proceeding under any other federal or state bankruptcy, insolvency, reorganization or similar law, or have such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed and unstayed for 90 days; (iv) make an assignment for the benefit of creditors; or (v) have a receiver or trustee appointed for it or for the whole or any substantial part of its property which appointment is not vacated within a period of 90 days;

(d) Any representation or warranty made by the Borrower herein or any statement in any report, certificate, financial statement or other instrument furnished in connection with this Loan Agreement or with the purchase of the Bonds shall at any time prove to have been false or misleading in any adverse material respect when made or given; and

(e) There shall occur an "Event of Default" as defined in the Indenture or the Regulatory Agreement.

Notwithstanding the foregoing, if, by reason of Force Majeure, the Borrower is unable to perform or observe any agreement, term or condition hereof which would give rise to an Event of Default under subsection (b) hereof, the Borrower shall not be deemed in default during the continuance of such inability. However, the Borrower shall promptly give notice in writing to the Trustee and the Issuer of the existence of an event of Force Majeure and shall use commercially reasonable efforts to remove the effects thereof; provided that the settlement of strikes or other industrial disturbances shall be entirely within its discretion.

The term “Force Majeure” shall mean, without limitation, the following:

- (a) acts of God; strikes, lockouts or other industrial disturbances; acts of terrorism or of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornados; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation; or
- (b) any cause, circumstance or event not reasonably within the control of the Borrower.

The declaration of an Event of Default under subsection (c) above, and the exercise of remedies upon any such declaration, shall be subject to any applicable limitations of federal bankruptcy law affecting or precluding that declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings.

#### **Section 7.2 Remedies on Default**

Whenever an Event of Default shall have happened and be subsisting, any one or more of the following remedial steps may be taken:

- (a) If acceleration of the principal amount of the Bonds has been declared pursuant to Section 7.03 of the Indenture, the Trustee shall declare all Loan Payments to be immediately due and payable together with any other amounts payable by the Borrower under this Loan Agreement and the Note whereupon the same shall become immediately due and payable;
- (b) The Trustee may exercise any or all or any combination of the remedies specified in this Loan Agreement;
- (c) The Issuer or the Trustee may have access to, inspect, examine and make copies of the books, records, accounts and financial data of the Borrower pertaining to the Project; or
- (d) The Issuer or the Trustee may pursue all remedies now or hereafter existing at law or in equity to collect all amounts then due and thereafter to become due under this Loan Agreement, the Regulatory Agreement and the Note or to enforce the performance and observance of any other obligation or agreement of the Borrower under those instruments.

Notwithstanding the foregoing, neither the Issuer nor the Trustee, as assignee of the Issuer, shall be obligated to take any step which in its respective opinion will or might cause it to expend time or money or otherwise incur liability unless and until a satisfactory indemnity bond has been furnished to the Issuer or the Trustee, as applicable, at no cost or expense to the Issuer or the Trustee. Any amounts collected as Loan Payments or applicable to Loan Payments and any other amounts which would be applicable to payment of Bond Debt Service Charges collected pursuant to action taken under this Section shall be paid into the Bond Fund and applied in accordance with the provisions of the Indenture or, if the Outstanding Bonds have been paid and discharged in

accordance with the provisions of the Indenture, shall be paid as provided in Section 5.08 of the Indenture for transfers of remaining amounts in the Bond Fund.

The provisions of this Section are subject to the further limitation that the rescission by the Trustee of its declaration that all of the Bonds are immediately due and payable also shall constitute an annulment of any corresponding declaration made pursuant to paragraph (a) of this Section and a waiver and rescission of the consequences of that declaration and of the Event of Default with respect to which that declaration has been made, provided that no such waiver or rescission shall extend to or affect any subsequent or other default or impair any right consequent thereon.

**Section 7.3 No Remedy Exclusive**

No remedy conferred upon or reserved to the Issuer or the Trustee by this Loan Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement, the Regulatory Agreement or the Note, or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair that right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than any notice required by law or for which express provision is made herein.

**Section 7.4 Agreement to Pay Attorneys' Fees and Expenses**

As further provided in Section 4.2, if the Issuer or the Trustee should incur expenses, including attorneys' fees, in connection with the enforcement of this Loan Agreement, the Regulatory Agreement or the Note or the collection of sums due thereunder, the Borrower shall reimburse the Issuer and the Trustee, as applicable, for the expenses so incurred upon demand.

**Section 7.5 No Waiver**

No failure by the Issuer or the Trustee to insist upon the strict performance by the Borrower of any provision hereof shall constitute a waiver of their right to strict performance and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by the Borrower to observe or comply with any provision hereof.

**Section 7.6 Notice of Default**

The Borrower shall notify the Trustee immediately if it becomes aware of the occurrence of any Event of Default hereunder or of any fact, condition or event which, with the giving of notice or passage of time or both, would become an Event of Default.

**Section 7.7 Investor Limited Partner's Cure Rights**

The Issuer hereby agrees that any cure of any Event of Default hereunder made or tendered by the Investor Limited Partner shall be deemed to be cured by the Borrower, and shall be accepted or rejected by the Issuer on the same basis as if made or tendered by the Borrower.

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## ARTICLE VIII

### MISCELLANEOUS

#### **Section 8.1 Term of Agreement**

This Loan Agreement shall be and remain in full force and effect from the date of delivery of the Bonds to the Holder until such time as all of the Bonds shall have been fully paid (or provision made for such payment) pursuant to the Indenture and all other sums payable by the Borrower under this Loan Agreement and the Note shall have been paid, except for obligations of the Borrower under Sections 3.9, 4.2 and 5.3 hereof, which shall survive any termination of this Loan Agreement.

#### **Section 8.2 Amounts Remaining in Funds**

Any amounts in the Bond Fund remaining unclaimed by the Holders of Bonds for two years after the due date thereof (whether at stated maturity or otherwise), at the option of the Borrower, shall be deemed to belong to and shall be paid, at the written request of the Borrower, to the Borrower by the Trustee as overpayment of Loan Payments. With respect to that principal of and interest on the Bonds to be paid from money paid to the Borrower pursuant to the preceding sentence, the Holders of the Bonds entitled to such money shall look solely to the Borrower for the payment of such money. Further, any amounts remaining in the Bond Fund, the Project Fund and any other special funds or accounts created under this Loan Agreement, the Regulatory Agreement or the Indenture after all of the Outstanding Bonds shall be deemed to have been paid and discharged under the provisions of the Indenture and all other amounts required to be paid under this Loan Agreement, the Note, the Regulatory Agreement and the Indenture have been paid, shall be paid to the Borrower to the extent that such money is in excess of the amounts necessary to effect the payment and discharge of the outstanding Bonds.

#### **Section 8.3 Notices**

All notices, certificates, requests or other communications hereunder shall be given in the same manner as notices, certificates, requests and other communications are to be given under Section 13.03 of the Indenture.

#### **Section 8.4 Extent of Covenants of the Issuer; No Personal Liability**

All covenants, obligations and agreements of the Issuer contained in this Loan Agreement and the Indenture shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of the Issuer or the City Council of the Issuer in other than his official capacity, and neither the members of the City Council of the Issuer nor any official executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof or by reason of the covenants, obligations or agreements of the Issuer contained in this Loan Agreement or in the Indenture.

### **Section 8.5 Binding Effect**

This Loan Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Issuer, the Borrower and their respective permitted successors and assigns provided that this Loan Agreement may not be assigned by the Borrower (except in connection with a sale or transfer of assets pursuant to Section 5.2 hereof) and may not be assigned by the Issuer except to the Trustee pursuant to the Indenture or as otherwise may be necessary to enforce or secure payment of Bond Debt Service Charges. This Loan Agreement may be enforced only by the parties, their assignees and others who may, by law, stand in their respective places.

### **Section 8.6 Amendments and Supplements**

Except as otherwise expressly provided in this Loan Agreement or the Indenture, subsequent to the issuance of the Bonds and prior to all conditions provided for in the Indenture for release of the Indenture having been met, this Loan Agreement, the Regulatory Agreement and the Note may not be effectively amended, changed, modified, altered or terminated except in accordance with the provisions of Article XI of the Indenture, as applicable.

### **Section 8.7 Execution Counterparts**

This Loan Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

### **Section 8.8 Severability**

If any provision of this Loan Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

### **Section 8.9 Governing Law**

This Loan Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

### **Section 8.10 Non-Recourse Obligations**

Notwithstanding anything to the contrary set forth herein, in the Note and in any other document delivered in connection herewith, it is hereby expressly agreed and understood that the obligations of the Borrower hereunder, under the Note and under every document executed and delivered in connection herewith, are non-recourse. Neither the Borrower nor any member, partner, officer, director or employee of the Borrower (each, a “Related Party”) shall have any personal liability for the repayment of the Loan. In furtherance thereof, the Issuer and the Trustee shall be entitled to look solely and exclusively to the Issuer Revenues, the Project and any income derived therefrom for the payment and other obligations of the Borrower hereunder, under the

Note and all evidences of indebtedness secured hereby, and shall not seek a personal judgment against any member, partner, officer, director, member or stockholder of the Borrower, provided that nothing herein shall relieve any such Related Party from liability for any of the following:

- (a) rent collected for more than one month in advance and received by such Related Party and not applied to the reasonable operating requirements of the Project;
- (b) misappropriation or misapplication by such Related Party of insurance or eminent domain proceeds;
- (c) fraud or material misrepresentation by such Related Party against the Issuer or the Holder;
- (d) conversion by such Related Party of all or a material portion of the Project; or
- (e) gross negligence, willful misconduct or intentional torts of such Related Party relating to the Project or the revenues therefrom.

#### **Section 8.11 HUD-Required Provisions**

Borrower and Issuer acknowledge that this Loan Agreement, and all Borrower's obligations hereunder, are subject and subordinate to the FHA Loan Documents and the Program Obligations (as defined in the FHA Mortgage). Notwithstanding any provisions of this Loan Agreement to the contrary, no obligations of the Borrower hereunder shall be payable except from (A) Surplus Cash (as defined in the HUD Regulatory Agreement), (B) funds that are not derived from (i) revenues of the Project (as defined in the FHA Mortgage), (ii) the proceeds of the FHA Note, or (iii) any reserve or deposit made with the FHA Lender or any other party as required by HUD in connection with the FHA Loan Documents, or (C) FHA Lender Funds which have been deposited into the Collateral Fund by or at the direction of the FHA Lender (collectively, "Non-Project Sources"). No claims or actions shall be made (or payable) under this Loan Agreement against the Project, the FHA Lender, the proceeds of the FHA Note, or the assets of the Borrower, except from Non-Project Sources. In addition, the rights and obligations of the parties under this Loan Agreement and all other documents evidencing, implementing, or securing this Loan Agreement (collectively, the "Subordinate Bond Documents") are and shall be subordinated in all respects to the rights and obligations of the parties to and under the FHA Loan Documents. In the event of any conflict between the provisions of (i) this Loan Agreement or the Subordinate Bond Documents and (ii) the provisions of the FHA Loan Documents or the Program Obligations, the provisions of the FHA Loan Documents or the Program Obligations shall control. The provisions of this Section 8.11 shall control over any inconsistent provisions in this Loan Agreement or the Subordinate Bond Documents. This Loan Agreement shall not be amended or modified without the prior written consent of HUD.

#### **Section 8.12 Limitation on Liability of the Issuer**

The Issuer shall not be obligated to pay the principal of or interest on the Bonds, except from money and assets received by the Trustee on behalf of the Issuer pursuant to this Loan Agreement, or from amounts held by the Trustee under the Indenture. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith and credit of

the Issuer is pledged to the payment of the principal of or interest on the Bonds. The Issuer shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Loan Agreement, the Note, the Bonds, the Indenture or the Regulatory Agreements except only to the extent amounts are received for the payment thereof from the Borrower under this Loan Agreement, or from amounts held by the Trustee under the Indenture.

The Borrower hereby acknowledges that the Issuer's sole source of money to repay the Bonds will be provided by the payments made by the Borrower pursuant to this Loan Agreement, and amounts in certain funds and accounts held by the Trustee under the Indenture, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal of and interest on the Bonds as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon notice from the Trustee, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal of or interest on the Bonds, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Trustee, the Borrower, the Issuer or any third party, subject to any right of reimbursement from the Trustee, the Issuer or any such third party, as the case may be, therefor.

#### **Section 8.13 Waiver of Personal Liability**

No commissioner, officer, agent or employee of the Issuer shall be individually or personally liable for the payment of any principal of or interest on the Bonds or any other sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Loan Agreement; but nothing herein contained shall relieve any such commissioner, member, officer, agent or employee from the performance of any official duty provided by law or by this Loan Agreement.

#### **Section 8.14 Delivery of Reports, Etc.**

The delivery of reports, information and documents to the Issuer as provided herein is for informational purposes only and the Issuer's receipt of such shall not constitute constructive knowledge of any information contained therein or determinable from information contained therein. The Issuer shall have no duties or responsibilities except those that are specifically set forth herein, and no other duties or obligations shall be implied in this Loan Agreement against the Issuer.

#### **Section 8.15 Audit Expenses.**

The Borrower agrees to pay any costs incurred by the Issuer, including fees of Issuer's counsel, as a result of an audit by the Issuer or the Issuer's compliance with an audit or inquiry of any kind, random or otherwise, by the Internal Revenue Service, the Minnesota Department of Revenue, the Minnesota Office of the State Auditor, or any other governmental agency with respect to the Combined Bonds or the Project.

IN WITNESS WHEREOF, the Issuer and the Borrower have caused this Loan Agreement to be duly executed in their respective names, all as of the date hereinbefore written.

**CITY OF BROOKLYN PARK, MINNESOTA**

By \_\_\_\_\_  
Its: Mayor

By \_\_\_\_\_  
Its: City Manager

[Signature page to Loan Agreement]

**AMORCE I LIMITED PARTNERSHIP,**  
a Minnesota limited partnership

By: Amorce I GP LLC,  
a Minnesota limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Lori Boisclair  
Its: President/Chief Manager

[Signature page to Loan Agreement]

**EXHIBIT A**

**Form of Note**

*This Note has not been registered under the Securities Act of 1933. Its transferability is restricted by the Trust Indenture and the Loan Agreement referred to herein.*

[\$8,540,000]

August [\_\_\_], 2019

Amorce I Limited Partnership, a Minnesota limited partnership (the “Borrower”), for value received, promises to pay in installments to the City of Brooklyn Park, Minnesota, as Issuer (the “Issuer”) under a Trust Indenture, dated as of August 1, 2019 (the “Indenture”), between the Issuer and U.S. Bank National Association, as Trustee (the “Trustee”), the principal sum of

[\_\_\_\_\_] THOUSAND 00/100 DOLLARS

and to pay interest on the unpaid balance of such principal sum from and after the date hereof at the rate of [\_\_\_]% per annum, to but not including the Initial Mandatory Tender Date (as defined in the Indenture), and thereafter at the applicable Remarketing Rate (as defined in the Indenture) until the payment of such principal sum has been made or provided for. The principal amount stated above shall be paid on or before the fifth (5<sup>th</sup>) Business Day (as defined in the Indenture) immediately preceding the Maturity Date (as defined in the Indenture). Interest shall be calculated on the basis of a 360-day year of 12 equal months. Interest on this Note shall be paid in Federal Reserve funds on the fifth Business Day next preceding each January 1 and July 1, commencing January 1, 2020 (the “Interest Payment Dates”).

This Note has been executed and delivered by the Borrower to the Issuer pursuant to a certain Loan Agreement, dated as of August 1, 2019 (the “Loan Agreement”), between the Issuer and the Borrower. Terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement and the Indenture.

Under the Loan Agreement, the Issuer has loaned the Borrower a portion of the principal proceeds received from the sale of the Issuer’s \$[8,540,000] Multifamily Housing Revenue Refunding Bonds (Amorce I Limited Partnership Project), Series 2019A dated as of the date hereof (the “Bonds”) to assist in the financing of the Project (as defined in the Indenture), and the Borrower has agreed to repay such loan by making payments (“Loan Payments”) at the times and in the amounts set forth in this Note for application to the payment of Bond Debt Service Charges on the Bonds as and when due. The Bonds have been issued, concurrently with the execution and delivery of this Note, pursuant to, and are secured by, the Indenture, and the Indenture has been assigned by the Issuer to the Trustee to secure the repayment of principal and interest on the Bonds and other amounts under the Indenture.

To provide funds to pay the principal of and interest on the Bonds as and when due as specified herein, the Borrower hereby agrees to and shall make Loan Payments in United States Federal Reserve funds on the fifth (5<sup>th</sup>) Business Day immediately preceding each Interest Payment Date in an amount equal to the Bond Debt Service Charges on the Bonds payable on the next succeeding Interest Payment Date related thereto. In addition, to provide funds to pay the Bond

Debt Service Charges on the Bonds as and when due at any other time, the Borrower hereby agrees to and shall make Loan Payments in United States Federal Reserve funds on the fifth (5<sup>th</sup>) Business Day immediately preceding any other date on which any Bond Debt Service Charges on the Bonds shall be due and payable, whether at maturity, upon redemption, mandatory tender, acceleration or otherwise, in an amount equal to those Bond Debt Service Charges.

If payment or provision for payment in accordance with the Indenture is made in respect of the Bond Debt Service Charges on the Bonds from money other than Loan Payments, this Note shall be deemed paid to the extent such payments or provision for payment of Bonds has been made. Consistent with the provisions of the immediately preceding sentence, the Borrower shall have credited against its obligation to make Loan Payments any amounts transferred from the Project Fund or the Collateral Fund to the Bond Fund. Subject to the foregoing, all Loan Payments shall be in the full amount required hereunder.

All Loan Payments shall be made to the Trustee at its designated corporate trust office for the account of the Issuer and deposited in the Bond Fund created by the Indenture. Except as otherwise provided in the Indenture, the Loan Payments shall be used by the Trustee to pay the Bond Debt Service Charges on the Bonds as and when due.

The obligation of the Borrower to make the payments required hereunder shall be absolute and unconditional and the Borrower shall make such payments without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set-off, recoupment or counterclaim which the Borrower may have or assert against the Issuer, the Trustee or any other person.

This Note is subject to optional prepayment by the Borrower on the terms stated in the Loan Agreement.

Whenever an Event of Default under Section 7.01 of the Indenture shall have occurred and, as a result thereof, the principal of and any premium on all Bonds then outstanding, and interest accrued thereon, shall have been declared to be immediately due and payable pursuant to Section 7.03 of the Indenture, the unpaid principal amount of and any premium and accrued interest on this Note shall also be due and payable in Federal Reserve funds on the date on which the principal of and premium and interest on the Bonds shall have been declared due and payable; provided that the annulment of a declaration of acceleration with respect to the Bonds shall also constitute an annulment of any corresponding declaration with respect to this Note.

The payment obligations of this Note are non-recourse to the Borrower to the extent set forth in Sections 8.10 and 8.11 of the Loan Agreement.

The Borrower, Trustee and Issuer acknowledge that, after closing of the FHA Insured Mortgage Loan, this Note, and all Borrower's obligations hereunder, will be subject and subordinate to the FHA Loan Documents: (i) Note (Multistate), dated as of August 1, 2019, from Borrower to FHA Lender, initially endorsed for mortgage insurance by the United States Department of Housing and Urban Development ("HUD") pursuant to Section 221(d)(4) of the National Housing Act, as amended (the "FHA Note"); (ii) Multifamily Mortgage, Assignment of Leases and Rents, and Security Agreement (Minnesota), dated as of the date of the FHA Note,

from Borrower for the benefit of FHA Lender to secure the FHA Note (the “FHA Mortgage”); (iii) Regulatory Agreement for Multifamily Projects, dated as of the date of the FHA Note, between Borrower and HUD (the “HUD Regulatory Agreement”); and (iv) any and all other documents, agreements, or instruments which evidence or secure the indebtedness evidenced by the FHA Note. Notwithstanding any provision in this Note to the contrary, this Note shall not be due and payable prior to the maturity date of the FHA Note, provided that it may be prepaid at any time from (A) Surplus Cash (as defined in the HUD Regulatory Agreement), (B) funds that are not derived from revenues of the Project (as defined in the FHA Mortgage), the proceeds of the FHA Note, or any reserve or deposit made with the FHA Lender or any other party as required by HUD in connection with the FHA Loan Documents, or (C) FHA Lender Funds which have been deposited into the Collateral Fund by or at the direction of the FHA Lender (collectively, “Non-Project Sources”), but provided further that no prepayment of this Note is permitted prior to “placement in service” of the Project as such term is used in Section 42 of the Internal Revenue Code of 1986, as amended. Payments due under this Note may only be paid from Surplus Cash (but in no event greater than 75% of the total amount of Surplus Cash) or from Non-Project Sources; provided that this restriction on payment shall not excuse any default caused by the failure of the Borrower to pay the indebtedness evidenced by this Note. In addition, (1) the indebtedness evidenced by this Note and all other documents evidencing or securing this Note (collectively, the “Subordinate Loan Documents”) are and shall be subordinated in right of payment, to the prior payment in full of the indebtedness evidenced by the FHA Loan Documents, and (2) the Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the FHA Mortgage and the other FHA Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the FHA Mortgage and the other FHA Loan Documents (including but not limited to, all sums advanced for the purposes of (a) protecting or further securing the lien of the FHA Mortgage, curing defaults by Borrower under the FHA Loan Documents or for any other purpose expressly permitted by the FHA Mortgage, or (b) constructing, rehabilitating, renovating, repairing, furnishing, fixturing, or equipping the Project).

In the event of any conflict between the provisions of (i) this Note or the Subordinate Loan Documents and (ii) the provisions of the FHA Loan Documents or the Program Obligations (as defined in the FHA Mortgage), the provisions of the FHA Loan Documents or the Program Obligations shall control.

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed in its name as of the date first above written.

**AMORCE I LIMITED PARTNERSHIP,**  
a Minnesota limited partnership

By: Amorce I GP LLC,  
a Minnesota limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Lori Boisclair  
Its: President/Chief Manager

**EXHIBIT B**

**Form of Completion Certificate**

\$[8,540,000]  
City of Brooklyn Park, Minnesota  
Multifamily Housing Revenue Refunding Bonds  
(Amorce I Limited Partnership Project)  
Series 2019A

**COMPLETION CERTIFICATE**

To:

U.S. Bank National Association  
Corporate Trust Services  
60 Livingston Avenue, 3rd Floor  
EP-MN-WS3C  
St. Paul, Minnesota 55107-2292  
Attn: Dan Sheff

City of Brooklyn Park, Minnesota  
5200 85th Avenue N.  
Brooklyn Park, MN 55443  
Attn: City Finance Director

Pursuant to Section 3.7 of the Loan Agreement, dated as of August 1, 2019 (the “Loan Agreement”), between the City of Brooklyn Park, Minnesota (the “Issuer”) and Amorce I Limited Partnership, a Minnesota limited partnership (the “Borrower”) and relating to the captioned bonds, the undersigned Authorized Borrower Representative hereby certifies that (with capitalized words and terms used and not defined in this Completion Certificate (the “Certificate”) having the meanings assigned in the Loan Agreement):

(a) The Project was substantially completed and available and suitable for use as multifamily housing on \_\_\_\_\_.

(b) All other facilities necessary in connection with the Project have been acquired, constructed, equipped and improved.

(c) The acquisition, rehabilitation, construction, equipping and improvement of the Project and those other facilities have been accomplished in such a manner as to conform in all material respects with all applicable zoning, planning, building, environmental and other similar governmental regulations.

(d) Except as provided in subsection (e) of this Certificate, all costs of that acquisition, rehabilitation, construction, equipping and improvement due on or after the date of this Certificate and now payable have been paid.

(e) The Trustee shall retain \$\_\_\_\_\_ in the Series 2017 Account of the Project Fund for the payment of costs of the Project not yet due or for liabilities which the Borrower is contesting or which otherwise should be retained, for the following reasons:

(f) This Certificate is given without prejudice to any rights against third parties that now exist or subsequently may come into being.

IN WITNESS WHEREOF, the Authorized Borrower Representative has set his or her hand as of the \_\_\_ day of \_\_\_\_\_, 20\_\_.

Authorized Borrower Representative

By: \_\_\_\_\_  
Lori Boisclair, President/Chief Manager of Amorice I  
GP LLC, the general partner of the Borrower

**EXHIBIT C**

**Form of FHA Lender's Certificate to Trustee**

FHA LENDER'S CERTIFICATE TO TRUSTEE

Pursuant to Section 3.4 of the Loan Agreement (the "*Loan Agreement*") between the City of Brooklyn Park, Minnesota (the "*Issuer*") and Amorice I Limited Partnership, a Minnesota limited partnership (the "*Borrower*"), dated as of August 1, 2019, the undersigned Authorized Lender Representative hereby certifies that the deposit of \$\_\_\_\_\_ into the Collateral Fund on \_\_\_\_\_, 20\_\_ was fully derived from FHA Lender Funds or other Available Money.

Capitalized terms used herein and not otherwise defined herein shall have the meanings given them in the Indenture referenced in the Loan Agreement.

This \_\_\_ day of \_\_\_\_\_, 20\_\_.

By: Authorized Lender Representative

By: \_\_\_\_\_  
[Name/Title]

**EXHIBIT D**

**Form of Borrower's Certificate to Trustee**

**BORROWER'S CERTIFICATE TO TRUSTEE**

Pursuant to Section 3.4 of the Loan Agreement (the "*Loan Agreement*") between the City of Brooklyn Park, Minnesota (the "Issuer") and Amorice I Limited Partnership, a Minnesota limited partnership (the "*Borrower*"), dated as of August 1, 2019, the undersigned Authorized Borrower Representative hereby certifies that the deposit of \$\_\_\_\_\_ into the Collateral Fund on \_\_\_\_\_, 20\_\_ was fully derived from Available Money.

Capitalized terms used herein and not otherwise defined herein shall have the meanings given them in the Indenture referenced in the Loan Agreement.

This \_\_\_ day of \_\_\_\_\_, 20\_\_.

Authorized Borrower Representative

By: \_\_\_\_\_  
Lori Boisclair, President/Chief Manager of Amorice I  
GP LLC, the general partner of the Borrower

## EXHIBIT E

### Form of Disbursement Request

STATEMENT NO. \_\_\_\_\_ REQUESTING DISBURSEMENT OF FUNDS FROM SERIES 2017 ACCOUNT OF THE PROJECT FUND PURSUANT TO SECTION 3.4 OF THE LOAN AGREEMENT DATED AS OF AUGUST 1, 2019 BETWEEN THE CITY OF BROOKLYN PARK, MINNESOTA AND AMORCE I LIMITED PARTNERSHIP

Pursuant to Section 3.4 of the Loan Agreement (the “*Agreement*”) between the City of Brooklyn Park, Minnesota (the “*Issuer*”) and Amorice I Limited Partnership, a Minnesota limited partnership (the “*Borrower*”), dated as of August 1, 2019, relating to the Issuer’s Multifamily Housing Revenue Refunding Bonds (Amorice I Limited Partnership Project), Series 2019A, in the original aggregate principal amount of \$[8,540,000], the undersigned Authorized Borrower Representative hereby requests and authorizes U.S. Bank National Association, as trustee (the “*Trustee*”), as depository of the Project Fund created by the Indenture, to disburse out of the moneys deposited in the Series 2017 Account of the Project Fund in the amount(s) and to the person(s) set forth in this certificate immediately upon a corresponding amount of FHA Lender Funds or other Available Moneys being deposited by the FHA Lender or the Borrower into the Collateral Fund. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Indenture referenced in the Agreement.

To induce the Trustee to release moneys deposited in the Series 2017 Account of the Project Fund pursuant to the terms of the Indenture and the Agreement in the amounts(s) and to the person(s) set forth herein and in the Disbursement Schedule attached hereto, the undersigned Borrower represents, warrants and certifies to the Issuer and the Trustee:

- (a) Each item for which disbursement is requested hereunder either (i) are presently due and payable, constitute Project Costs properly incurred by the Borrower in connection with the Project being financed with the proceeds of the Loan, or are reimbursable Project Costs properly chargeable against the Loan; or (ii) are to be deposited to an escrow fund to be disbursed therefrom solely for Project Costs properly incurred by the Borrower in connection with the Project; and in each case none of the items for which disbursement is requested has formed the basis for any disbursement heretofore made from said Series 2017 Account of the Project Fund. The amount or amounts and the party or parties to whom the disbursements shall be made are specified in the Disbursement Schedule attached hereto (and may be the undersigned in the case of reimbursement for advances and payments made or cost incurred for work done by the undersigned).
- (b) Each such item is or was necessary in connection with the acquisition and rehabilitation of the Dwelling Units (as defined in the Regulatory Agreement) of the Project.
- (c) The costs specified in the Disbursement Schedule attached hereto, when added to all previous disbursements under the Loan, will result in at least 95% of the

aggregate amount of all disbursements having been used to pay costs properly chargeable to the capital account of a qualified residential rental project within the meaning of Section 142(d) of the Code and functionally related and subordinate property thereto.

- (d) The costs specified herein, when added to all previous and all proposed future disbursements under the Loan, will result in the rehabilitation expenditures, within the meaning of Section 147(d) of the Code, with respect to the Project equaling or exceeding 15% of the portion of the cost of acquiring the Project financed with proceeds of the Combined Bonds (which include transferred proceeds of the Prior Note).
- (e) To the knowledge of the undersigned, there is no current or existing event of default pursuant to the terms of the Agreement or the Regulatory Agreement and no event exists which by notice or passage of time or both would constitute an event of default under any of the foregoing documents.
- (f) No representation or warranty of the Borrower contained in the Agreement or the Regulatory Agreement is materially incorrect or inaccurate, except as the Borrower has set forth in writing, and there has been no event of default under the terms of any of those documents and which is continuing and no event shall exist which by notice, passage of time or both would constitute an event of default under any of those documents.
- (g) This statement and all exhibits hereto, including the Disbursement Schedule attached hereto, shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warrant, protection and authority to the Trustee for its actions taken pursuant hereto.

This statement constitutes the approval of the Borrower of the disbursement hereby requested and authorized.

This \_\_\_ day of \_\_\_\_\_, 20\_\_.

**AMORCE I LIMITED PARTNERSHIP,**  
a Minnesota limited partnership

By: Amorce I GP LLC,  
a Minnesota limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Lori Boisclair  
Its: President/Chief Manager

DISBURSEMENT SCHEDULE 1  
TO STATEMENT NO. \_\_\_\_\_ REQUESTING AND AUTHORIZING  
DISBURSEMENT OF FUNDS FROM SERIES 2017 ACCOUNT OF PROJECT FUND  
PURSUANT TO SECTION 3.4 OF THE LOAN AGREEMENT DATED AS OF August 1, 2019  
BETWEEN THE CITY OF BROOKLYN PARK, MINNESOTA AND AMORCE I LIMITED  
PARTNERSHIP, A MINNESOTA LIMITED PARTNERSHIP

<u>PAYEE</u>	<u>AMOUNT</u>	<u>PURPOSE</u>
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**Draft**  
**Friday, July 5, 2019**

UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF HENNEPIN  
CITY OF BROOKLYN PARK, MINNESOTA

**MULTIFAMILY HOUSING REVENUE REFUNDING NOTE**  
**SERIES 2019B**

August [\_\_], 2019

No. R-1

[\$5,250,000]

For value received the CITY OF BROOKLYN PARK, MINNESOTA, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the "Issuer" or the "City"), hereby promises to pay to BRIDGEWATER INVESTMENT MANAGEMENT, INC., a Minnesota corporation, its successors or registered assigns (the "Lender"), from the source and in the manner hereinafter provided, the principal sum of [\_\_\_\_\_] and no/100 Dollars (\$[5,250,000]), or so much thereof as has been advanced hereunder and remains unpaid from time to time (the "Principal Balance"), with interest on the outstanding Principal Balance as set forth below. All payments of principal and interest on this Multifamily Housing Revenue Refunding Note (Amorce I Limited Partnership Project), Series 2019B (the "Note") shall be made in any coin or currency which, at the time or times of payment, are legal tender for the payment of public or private debts in the United States of America, in accordance with the terms hereinafter set forth.

(1) Commencing as of the date hereof and continuing through the Maturity Date (as hereinafter defined), interest shall accrue at a variable rate on the Principal Balance at the Prime Rate (the "Interest Rate"); provided however, the Interest Rate payable hereunder shall not be less than the Prime Rate published on the date of Closing (as defined in the Loan Agreement) on any Adjustment Date (as hereinafter defined). The Prime Rate shall mean the Prime Rate published in the Midwest Edition of the Wall Street Journal (the "Prime Rate"). The Prime Rate shall float daily and the Interest Rate shall adjust the next day following any time there is a change in the Prime Rate (each, an "Adjustment Date"). On each Adjustment Date, the Interest Rate shall change to a new amount and shall continue in effect until the next Adjustment Date.

(2) Notwithstanding the foregoing, upon the failure to pay the principal of or interest on this Note when due or upon the occurrence of any Event of Default, as hereafter defined, interest on the Principal Balance shall accrue at an annual rate which is 500 basis points in excess of the interest rate otherwise payable hereunder ("Default Rate"). The interest rate may also be adjusted to the Default Rate as provided in Section 8 below. Interest shall be computed on the basis of actual days elapsed in a year of 360 days.

(3) Interest is payable beginning [\_\_\_\_], 2019, and on the \_\_\_\_ day of each consecutive month thereafter, plus a final interest payment with the final payment of principal.

(4) Principal is payable on February \_\_, 2021 (the "Maturity Date"), subject to mandatory purchase in accordance with Section 9 hereof.

(5) A late payment fee in an amount equal to 5% of the delinquent amount shall be paid with respect to all payments not made within 10 days of the date due. The late payment fee shall not apply to a payment of all principal due upon maturity or acceleration.

(6) Payments shall be applied first to any fees owing to the Lender, second to accrued and unpaid interest on the Principal Balance, and thereafter to reduction of the Principal Balance.

(7) In any event, the payments hereunder shall be sufficient to pay all principal and interest due, as such principal and interest becomes due, at maturity, upon earlier redemption and prepayment, or otherwise.

(8) If the interest on this Note should become subject to federal income taxation pursuant to a “Determination of Taxability” as that term is defined in Section 4.5 of the Loan Agreement, dated as of the date hereof (the “Loan Agreement”), between the Issuer and Amorce I Limited Partnership, a Minnesota limited partnership (the “Borrower”), relating to the Note, and the Purchaser delivers to the Borrower a copy of the notice of the “Determination of Taxability,” the interest rate per annum on this Note shall be immediately adjusted to be equal to the Default Rate. In addition, the Lender shall be entitled to receive upon demand an amount equal to the aggregate difference between the monthly payments theretofore made to the Lender on this Note and the monthly payments which would have been made during such period if the Default Rate had been in effect from and after the “Date of Taxability,” as that term is defined in Section 4.5 of the Loan Agreement.

(9) In lieu of providing for a balloon maturity of this Note prior to the Maturity Date, the Lender has agreed to the terms of this paragraph. This Note is subject to mandatory purchase by the Borrower on [\_\_\_\_\_, 20\_\_] (the “Purchase Date”). At the option of the Lender, the Purchase Date may be extended and all principal of and interest on the Note shall be paid in full on the Maturity Date if all the conditions for an extension set forth in Section 1 of the Loan Purchase Agreement, dated the date hereof (the “Loan Purchase Agreement”), between the Borrower and the Lender, have been met. On the Purchase Date, the Lender shall deliver this Note to the Borrower and this Note shall be purchased by the Borrower at a price equal to the sum of: (i) the outstanding Principal Balance of this Note as of the Purchase Date; plus (ii) accrued and unpaid interest on this Note to the Purchase Date; plus (iii) all other amounts owing from the Borrower to the Lender under the Loan Documents (as such term is defined in the Loan Purchase Agreement) as of the Purchase Date. If this Note is not purchased by the Borrower on the Purchase Date, such failure to purchase this Note shall constitute an event of default under this Note and shall constitute an “Event of Default” under the Loan Agreement.

(10) Principal and interest due hereunder shall be payable at the office of the Lender set forth in the attached Note register, or at such other place as the Lender may designate in writing.

(11) This Note is issued by the Issuer to provide funds for the refunding of the Multifamily Housing Revenue Note (Amorce I Limited Partnership Project), Series 2017, issued by the Issuer on May 9, 2017 in the principal amount of \$15,000,000, the proceeds of which financed the acquisition and rehabilitation of 170 units of multifamily rental apartments, and facilities functionally related and subordinate thereto, commonly known as Brooks Landing Apartments and Brook Gardens Apartments and Townhomes, located at 5825 74th Avenue North and 5550 69th Avenue North, respectively, in the City, and this Note is issued pursuant to and in full compliance with the Constitution and laws of the State of Minnesota, particularly Minnesota Statutes, Chapters 462C and 462A, as amended, and pursuant to a resolution of the governing body of the Issuer duly adopted on July 22, 2019 (the “Resolution”).

(12) The proceeds of this Note are being loaned by the Issuer to the Borrower pursuant to the terms and conditions of the Loan Agreement. This Note is secured by, among other documents and instruments: (i) an Assignment of Loan Agreement, dated as of the date hereof (the “Assignment of Loan Agreement”), between the Issuer and the Lender; (ii) an Assignment of Capital Contributions, a Collateral Assignment of Contract Rights, and Pledge Agreement – Deposit Account, each dated the

date hereof, from Borrower to the Lender, and a Pledge Agreement, dated the date hereof, by Amorice I GP LLC with respect to its the general partner interest in the Borrower to the Lender (collectively, the “Security Documents”); (iii) the Guaranty agreement, dated as of the date hereof, by Lori Boisclair (the “Guarantor”) in favor of the Lender (the “Guaranty”); and (iv) the other Loan Documents. The entire proceeds of this Note shall be advanced by the Lender on the date hereof and will be applied, along with the proceeds of tax-exempt revenue bonds issued by the Issuer on the date hereof (the “Series 2019A Bonds”) to the redemption and prepayment of the Prior Note. Transferred, unspent proceeds of the Prior Note which become transferred proceeds of this Note upon the redemption and prepayment of the Prior Note will be disbursed on the date hereof to pay Issuance Expenses and Project Costs (each as defined in the Loan Agreement).

(13) The Issuer, for itself and its successors and assigns, hereby waives demand, presentment, protest and notice of dishonor; and to the extent permitted by law, the Lender may extend interest and/or principal of or any service charge or premium due on this Note, or release any part or parts of the property and interest subject to any security document from the same, all without notice to or consent of any party liable hereon or thereon and without releasing any such party from such liability and whether or not as a result thereof the interest on this Note is no longer excludable from gross income for federal income tax purposes. In no event, however, may the Maturity Date be extended.

(14) This Note may be prepaid, in whole or in part, at any time without premium or penalty, upon written notice given to the Lender by certified or registered mail, addressed to the Lender at its registered address. On the date fixed for prepayment funds shall be paid to the Lender at its registered address. Upon any partial or full prepayment of the Principal Balance of this Note, there shall also be paid, with respect to the portion of the Principal Balance prepaid, the accrued and unpaid interest on the Principal Balance to be prepaid, plus any reasonable attorneys’ fees and costs. Any prepayment shall not affect the monthly payments of principal to be made pursuant to the terms of this Note. No penalty will be imposed if Borrower elects to prepay this Note.

(15) As provided in the Resolution and subject to certain limitations set forth therein, this Note is only transferable upon the books of the Issuer by the Lender in person or by its agent duly authorized in writing, at the Lender’s expense, upon surrender hereof together with a written instrument of transfer satisfactory to the Finance Director of the Issuer, duly executed by the Lender or its duly authorized agent. Upon such transfer the Finance Director of the Issuer will note the date of registration and the name and address of the new registered Holder in the registration blank appearing below. The Issuer may deem and treat the person in whose name this Note is last registered upon the books of the Issuer with such registration noted on this Note, as the absolute owner hereof, whether or not overdue, for the purpose of receiving payment of or on the account of the Principal Balance, redemption price, or interest and for all other purposes, and all such payments so made to the Lender or upon its order shall be valid and effective to satisfy and discharge the liability upon this Note to the extent of the sum or sums so paid, and the Issuer shall not be affected by any notice to the contrary.

(16) All of the agreements, conditions, covenants, provisions, and stipulations contained in the documents described in Section 12 and any other documents securing this Note (collectively, the “Security Documents”) are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein.

(17) This Note and interest thereon and any service charge or premium due hereunder (payable solely from payments to be made by the Borrower under the Security Documents) do not constitute a debt of the Issuer within the meaning of any constitutional or statutory limitation, are not payable from or a charge upon any funds other than the revenues and proceeds pledged to the payment thereof, and do not give rise to a pecuniary liability of the Issuer or, to the extent permitted by law, of any of its officers, agents,

or employees, and no holder of this Note shall ever have the right to compel any exercise of the taxing power of the Issuer to pay this Note or the interest thereon, or to enforce payment thereof against any property of the Issuer, and this Note does not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the Issuer, and the agreement of the Issuer to perform or cause the performance of the covenants and other provisions herein referred to shall be subject at all times to the availability of revenues or other funds furnished for such purpose in accordance with the Loan Agreement, sufficient to pay all costs of such performance or the enforcement thereof.

(18) It is agreed that time is of the essence of this Note. If an Event of Default (as that term is defined in the Loan Purchase Agreement or the Loan Agreement) shall occur, then Issuer, upon written direction of the Lender, or the Lender shall have the right and option to declare the Principal Balance and accrued interest thereon, immediately due and payable, whereupon the same, plus any other amounts owing to the Lender, shall be due and payable (but shall be payable solely from payments to be made by the Borrower under the Security Documents). Failure to exercise such option at any time shall not constitute a waiver of the right to exercise the same at any subsequent time.

(19) The remedies of the Lender, as provided herein and in the Security Documents, are not exclusive and shall be cumulative and concurrent and may be pursued singly, successively, or together, at the sole discretion of the Lender, and may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

(20) The Lender shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Lender and, then only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

(21) This Note has been issued without registration under state or federal or other securities laws, pursuant to an exemption for such issuance; and accordingly this Note may not be assigned or transferred in whole or part, nor may a participation interest in this Note be given pursuant to any participation agreement, except in accordance with the Resolution and an applicable exemption from such registration requirements.

(22) THIS NOTE, INTEREST HEREON, AND ANY PENALTY OR CHARGE OR ANY AMOUNTS PAYABLE HEREUNDER, OR HOWEVER DESIGNATED, IS A SPECIAL LIMITED OBLIGATION OF THE ISSUER PAYABLE SOLELY FROM THE REVENUES AND PROCEEDS PLEDGED HERETO. THIS NOTE AND THE INTEREST HEREON DO NOT CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY, GENERAL OR MORAL OBLIGATION OR A PLEDGE OF THE FULL FAITH AND CREDIT OR TAXING POWER OF THE ISSUER, THE STATE OF MINNESOTA, OR ANY POLITICAL SUBDIVISION OF THE STATE OF MINNESOTA WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATIONS AND ARE NOT PAYABLE FROM OR A CHARGE UPON ANY FUNDS OF THE ISSUER OTHER THAN THE REVENUES AND PROCEEDS PLEDGED BY THE ISSUER TO THE PAYMENT HEREOF AND DO NOT GIVE RISE TO A PECUNIARY LIABILITY OF THE ISSUER OR ITS OFFICERS, AGENTS OR EMPLOYEES AND NO HOLDER OF THIS NOTE SHALL EVER HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE ISSUER OR THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS TO PAY THIS NOTE OR TO ENFORCE PAYMENT HEREOF AGAINST ANY PROPERTY OF THE ISSUER OR ANY POLITICAL SUBDIVISION OF THE STATE OF MINNESOTA. THIS NOTE DOES NOT CONSTITUTE A CHARGE, LIEN OR ENCUMBRANCE, LEGAL OR EQUITABLE, UPON ANY PROPERTY OF THE ISSUER, AND THE AGREEMENT OF THE ISSUER TO PERFORM OR CAUSE THE PERFORMANCE OF THE COVENANTS AND OTHER PROVISIONS HEREIN REFERRED TO SHALL BE SUBJECT AT ALL TIMES TO THE

AVAILABILITY OF REVENUES OR OTHER FUNDS FURNISHED FOR SUCH PURPOSE IN ACCORDANCE WITH THE LOAN AGREEMENT SUFFICIENT TO PAY ALL COSTS OF SUCH PERFORMANCE OR THE ENFORCEMENT HEREOF. NEITHER THE STATE OF MINNESOTA NOR THE ISSUER NOR ANY OTHER POLITICAL SUBDIVISION OF THE STATE OF MINNESOTA SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF THIS NOTE OR INTEREST HEREON OR OTHER COSTS INCIDENT HERETO EXCEPT FROM REVENUES PLEDGED THEREFOR UNDER THE LOAN AGREEMENT AND THE ASSIGNMENT OF LOAN AGREEMENT, AS MORE FULLY SET FORTH IN THOSE DOCUMENTS. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER, IF ANY, OF THE ISSUER, THE STATE OF MINNESOTA, NOR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF THIS NOTE OR INTEREST HEREON OR OTHER COSTS INCIDENT HERETO. THIS NOTE IS NOT A DEBT OF THE UNITED STATES OF AMERICA OR ANY OTHER AGENCY THEREOF AND IS NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA. THIS NOTE IS NEITHER A MORAL NOR AN ANNUAL APPROPRIATION OBLIGATION OF THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE PROVISIONS OF THIS PARAGRAPH SHALL, FOR PURPOSES OF THIS NOTE, BE CONTROLLING AND SHALL BE GIVEN FULL FORCE AND EFFECT, ANYTHING ELSE TO THE CONTRARY IN THIS NOTE NOTWITHSTANDING.

IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts, and things required to exist, happen, and be performed precedent to or in the issuance of this Note do exist, have happened, and have been performed in regular and due form as required by law.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Issuer has caused this Note to be duly executed in its name and has caused this Note to be dated as of the date first written above.

CITY OF BROOKLYN PARK, MINNESOTA

By \_\_\_\_\_  
Its Mayor

By \_\_\_\_\_  
Its City Manager

NOTE REGISTER

The ownership of the unpaid Principal Balance of this Note and the interest accruing thereon is registered on the books of the City of Brooklyn Park, Minnesota, in the name of the holder last noted below.

Date of Registration	Name and Address Registered Owner	Signature of City Finance Director
_____, 2019	Bridgewater Investment Management, Inc. 7831 East Bush Lake Road Suite 300 Bloomington, MN 55439	
_____	_____	_____
_____	_____	_____
_____	_____	_____

**Draft**  
**Friday, July 5, 2019**

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**LOAN AGREEMENT**

**between**

**CITY OF BROOKLYN PARK, MINNESOTA**

**and**

**AMORCE I LIMITED PARTNERSHIP**

**Dated as of August [\_\_], 2019**

**Relating to:**

**[\$5,250,000]**  
**City of Brooklyn Park, Minnesota**  
**Multifamily Housing Revenue Refunding Note**  
**(Amorce I Limited Partnership Project)**  
**Series 2019B**

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Except for certain reserved rights, the interest of the City of Brooklyn Park, Minnesota in this Loan Agreement has been pledged and assigned to Bridgewater Investment Management, Inc., pursuant to an Assignment of Loan Agreement of even date herewith.

This instrument was drafted by:  
Kennedy & Graven, Chartered (SEL)  
470 US Bank Plaza  
200 South Sixth Street  
Minneapolis, Minnesota 55402

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## LOAN AGREEMENT

This Loan Agreement, dated as of August [\_\_], 2019 (the “Agreement”), is made and entered into by and between the City of Brooklyn Park, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the “Issuer” or “City”), and Amorice I Limited Partnership, a Minnesota limited partnership (the “Borrower”).

### RECITALS

WHEREAS, Minnesota Statutes, Chapters 462C and 462A, as amended (the “Act”), authorizes the Issuer to issue revenue obligations to finance the acquisition, construction, rehabilitation, and equipping of multifamily housing developments; and

WHEREAS, the Issuer will issue the Multifamily Housing Revenue Refunding Note (Amorice I Limited Partnership Project), Series 2019B, in the principal amount not to exceed \$[5,250,000] pursuant to this Loan Agreement, a resolution adopted by the City Council of the Issuer on July 22, 2019 and the Act; and

WHEREAS, the Note will be purchased by Bridgewater Investment Management, Inc., a Minnesota corporation (the “Lender”); and

WHEREAS, the Borrower agrees to be absolutely and unconditionally obligated to repay the Loan together with interest thereon, at times and in amounts sufficient to pay when due the principal of and interest on the Note; and

NOW THEREFORE, the Issuer and the Borrower each in consideration of the representations, covenants and agreements of the other as set forth herein, mutually represent, covenant and agree as follows:

### ARTICLE I

#### DEFINITIONS, EXHIBITS AND RULES OF INTERPRETATION

Section 1.1. Definitions. In this Agreement the following terms have the following respective meanings unless the context hereof clearly requires otherwise:

Act: Minnesota Statutes, Chapters 462C and 462A, as amended.

Agreement: this Loan Agreement, dated as of August [\_\_], 2019, between the Issuer and the Borrower, as the same may from time to time be amended or supplemented as herein provided.

Assignment of Loan Agreement: the Assignment of Loan Agreement, dated as of August [\_\_], 2019, between the Issuer and the Lender, assigning the Issuer’s interest in the Agreement (except for certain retained rights) to the Lender to the extent provided therein.

Bond Counsel: the firm of Kennedy & Graven, Chartered of Minneapolis, Minnesota, or any other firm of nationally-recognized bond counsel experienced in tax-exempt bond financing

acceptable to the Issuer, and any opinion of Bond Counsel shall be a written opinion signed by such Bond Counsel.

Borrower: Amorice I Limited Partnership, a Minnesota limited partnership, its successors and assigns, and any surviving, resulting, or transferee business entity which may assume its obligations in accordance with the provisions of this Agreement.

Borrower Tax Certificate: the Borrower Tax Certificate, dated the date of Closing, executed and delivered by the Borrower in connection with the issuance of the Note.

Building: collectively, the 170 units of multifamily rental apartments, and facilities functionally related and subordinate thereto, commonly known as Brooks Landing Apartments (“Brooks Landing”) and Brook Gardens Apartments and Townhomes (“Brook Gardens”), located at 5825 74th Avenue North and 5550 69th Avenue North, respectively, in the City to be acquired and rehabilitated or constructed, in part, with the proceeds of the Note and comprising a portion of the Improvements.

City: the City of Brooklyn Park, Minnesota.

Closing: August [\_\_\_], 2019, which is the date there is physical delivery of the Note to the Lender.

Code: the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.

Construction Costs: all direct costs authorized by the Act and paid or incurred by the Borrower to acquire the Land, rehabilitate and complete the Improvements, and acquire and install the Equipment, including, but not limited to, interest on the Note during rehabilitation, site preparation costs, architectural fees, engineering fees, contractor’s fees, and all costs of labor, material, and services.

Combined Bonds: collectively, the Series 2019A Bonds and the Note.

Counsel: an attorney designated by or acceptable to the Lender, duly admitted to practice law before the highest court of any state; and an attorney for the Borrower or the Issuer may be eligible for appointment as Counsel.

Date of Taxability: this term shall have the meaning ascribed to it in Section 4.5(2) hereof.

Determination of Taxability: this term shall have the meaning ascribed to it in Section 4.5(2) hereof.

Equipment: any and all machinery, equipment, furniture, and other tangible personal property purchased or to be purchased by the Borrower with the proceeds of the Loan.

Event of Default: any of the events described in Section 6.1 hereof.

FHA: the Federal Housing Administration.

FHA Insured Mortgage Loan: the mortgage loan in the original principal amount of \$[14,200,000] to be advanced by the FHA Lender to the Borrower and insured by FHA under Section 221(d)(4) of the National Housing Act, as amended.

FHA Lender: Dougherty Mortgage LLC, a Delaware limited liability company, its successors and assigns.

General Partner: Amorce I GP LLC, a Minnesota limited liability company, its successors and assigns.

Guarantor: Lori Boisclair, an individual;

Guaranty: the Guaranty agreement, dated as of the date hereof, by the Guarantor in favor of the Lender, as may be amended from time to time;

HUD: the United States Department of Housing and Urban Development.

HUD Regulatory Agreement: the Regulatory Agreement for Multifamily Projects dated as of August 1, 2019 between the Borrower and HUD, related to the FHA Insured Mortgage Loan.

Improvements: the acquisition, rehabilitation, and equipping of the Building and any equipment or tangible personal property to be constructed or installed by the Borrower, in accordance with the plans and specifications approved by the Lender.

Investor Limited Partner: shall mean initially [WNC Holding, LLC, a California limited liability company, and after its assignment of its interests, WNC Institutional Tax Credit Fund \_\_, L.P., a California limited partnership].

Issuance Expenses: shall mean any and all costs and expenses relating to the issuance, sale, and delivery of the Note, including, but not limited to, any fees of the Lender, all fees and expenses of legal counsel, financial consultants, feasibility consultants, and accountants, any fee to be paid to the Issuer, the preparation and printing of the Related Documents, and all other expenses relating to the issuance, sale, and delivery of the Note and any other costs which are treated as “issuance costs” within the meaning of Section 147(g) of the Code.

Issuer: the City of Brooklyn Park, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota, its successors or assigns.

Land: the real property and any other easements and rights described in **Exhibit A** hereto.

Lender: Bridgewater Investment Management, Inc., a Minnesota corporation, its successors and assigns.

Loan: the loan from the Issuer to the Borrower of the proceeds derived from the sale of the Note pursuant to the terms of this Agreement, as described in Section 3.1 of this Agreement.

Loan Purchase Agreement: the Loan Purchase Agreement, dated August [\_\_], 2019, between the Borrower and the Lender, together with any amendment thereto.

Note Register: the records kept by the Issuer to provide for the registration of transfer of ownership of the Note.

Note: the Series 2019B Note.

Partnership Agreement: the Amended and Restated Agreement of Limited Partnership of the Borrower, dated August [\_\_\_], 2019, as amended, modified, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

Principal Balance: so much of the principal sum of the Note as from time to time remains unpaid.

Prior Note: the Multifamily Housing Revenue Note (Amorce I Limited Partnership Project), Series 2017, issued by the Issuer on May 9, 2017 in the principal amount of \$15,000,000 to be refunded with the proceeds of the Combined Bonds.

Project: the Land, Building, Improvements, and Equipment as they may at anytime exist.

Project Costs: the total of all Construction Costs and Issuance Expenses.

Regulatory Agreement: collectively, the Regulatory Agreement, dated as of August 1, 2019, by and among the Trustee, the Issuer and the Borrower relating to Brooks Landing, and the Regulatory Agreement, dated as of August 1, 2019, by and among the Trustee, the Issuer and the Borrower relating to Brook Gardens.

Rehabilitation Expenditures: means any amount properly chargeable to capital account which is incurred by the Borrower (excluding any expenditure described in Section 47(c)(2)(B) of the Code) in connection with the rehabilitation of the Building.

Related Documents: this Loan Agreement, the Assignment of Loan Agreement, the Loan Purchase Agreement, the Regulatory Agreement, the Security Documents, the Guaranty, and all other documents securing the Note or the Borrower's obligations under this Agreement.

Resolution: the resolution of the governing body of the Issuer, adopted July 22, 2019, authorizing the issuance of the Note, together with any supplement or amendment thereto.

Security Documents: an Assignment of Capital Contributions, dated the date hereof, from the Borrower to the Lender; a Collateral Assignment of Contract Rights, dated the date hereof, from Borrower to the Lender; a Pledge Agreement, dated the date hereof, by and between the General Partner and the Lender; and a Pledge Agreement – Deposit Account, dated the date hereof, by the Borrower in favor of Lender.

Series 2019A Bonds: the Multifamily Housing Revenue Refunding Bonds (Amorce I Limited Partnership Project), Series 2019A to be issued by the Issuer pursuant to the Act and the Resolution in the principal amount not to exceed \$[8,540,000].

Series 2019B Note: the Multifamily Housing Revenue Refunding Note (Amorce I Limited Partnership Project), Series 2019B, to be issued by the Issuer pursuant to the Act and the Resolution in the principal amount not to exceed \$[5,250,000].

State: the State of Minnesota.

Treasury Regulations: all proposed, temporary, or permanent federal income tax regulations then in effect and applicable.

Trustee: U.S. Bank National Association, a national banking association, and any co-trustee or successor trustee appointed, qualified and then acting as such under the provisions of the Trust Indenture related to the Series 2019A Bonds.

Section 1.2. Rules of Interpretation.

(1) This Agreement shall be interpreted in accordance with and governed by the laws of the State of Minnesota.

(2) The words “herein” and “hereof” and words of similar import, without reference to any particular section or subdivision, refer to this Agreement as a whole rather than to any particular section or subdivision hereof.

(3) References herein to any particular section or subdivision hereof are to the section or subdivision of this instrument as originally executed.

(4) Where the Borrower is permitted or required to do or accomplish any act or thing hereunder, the Borrower may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Borrower.

(5) The Table of Contents and titles of articles and sections herein are for convenience only and are not a part of this Agreement.

(6) Unless the context hereof clearly requires otherwise, the singular shall include the plural and vice versa and the masculine shall include the feminine and vice versa.

(7) Articles, sections, subsections and clauses mentioned by number only are those so numbered which are contained in this Agreement.

(8) References to the Note as “tax exempt” or to the “tax exempt status of the Note” are to the exclusion of interest on the Note from gross income pursuant to Section 103(a) of the Code, except during any period the Note is held by a “substantial user” or “related person,” irrespective of such forms of taxation as the alternative minimum tax or branch profits tax on foreign corporations, as is consistent with the approach taken in Section 59(i) of the Code.

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**ARTICLE II**  
**REPRESENTATIONS**

Section 2.1. Representations by the Issuer. The Issuer makes the following representations as the basis for its covenants herein:

(1) The Issuer is a home rule charter city and municipal corporation organized and existing under the Constitution and laws of the State and is authorized to issue the Note pursuant to the Act.

(2) To the actual knowledge of the undersigned, without inquiry or investigation, there is no pending or threatened suit, action, or proceeding against the Issuer before any court, arbitrator, administrative agency, or other governmental authority that challenges the execution and delivery by the Issuer of the Note, this Loan Agreement, the Assignment of Loan Agreement, or the Regulatory Agreement (collectively, the “Issuer Documents”).

(3) To the actual knowledge of the undersigned, without inquiry or investigation, the execution and delivery of the Issuer Documents will not constitute a breach of or default under any existing (a) provisions of any special legislative act or charter provision relating to the establishment of the Issuer, or (b) agreement, indenture, mortgage, lease, or other instrument to which the Issuer is a party or by which it is bound.

(4) No proceeding of the Issuer for the issuance and delivery of the Note or the execution and delivery of the Issuer Documents has been repealed, rescinded, amended, or revoked.

(5) The Note is issued as a “qualified residential rental bond” within the meaning of Section 142(a)(7) of the Code.

(6) The Issuer has received an allocation of tax exempt bonding authority for the Note pursuant to Minnesota Statutes, Chapter 474A.

Section 2.2. Representations by the Borrower. The Borrower makes the following representations as the basis for its covenants herein:

(1) The Borrower is a limited partnership duly organized under the laws of the State, is in good standing and duly authorized and qualified to conduct its business in the State and all other states where its activities require such authorization, has power to enter into the Related Documents to which it is a party and to use the Project for the purpose set forth in this Agreement and by proper corporate action has authorized the execution and delivery of the Related Documents to which it is a party.

(2) The General Partner is a limited liability company duly organized under the laws of the State, is in good standing and duly authorized and qualified to conduct its business in the State, is duly authorized to conduct its business in all states where its activities require such authorization, and by proper corporate action is authorized to enter into the Partnership Agreement.

(3) The execution and delivery of the Related Documents to which it is a party, the consummation of the transactions contemplated hereby and thereby, and the fulfillment of the terms and conditions thereof do not and will not conflict with or result in a breach of any of the terms or conditions of the Borrower's organizational documents, any restriction or any agreement or instrument to which the Borrower or any of its partners is now a party or by which it is bound or to which any property of the Borrower is subject, and do not and will not constitute a default under any of the foregoing or, to the best of the Borrower's knowledge, a violation of any order, decree, statute, rule or regulation of any court or of any state or federal regulatory body having jurisdiction over the Borrower or its properties, including the Project, and do not and will not result in the creation or imposition of any lien, charge, or encumbrance of any nature upon any of the property or assets of the Borrower contrary to the terms of any instrument or agreement to which the Borrower is a party or by which it is bound.

(4) The design and plan of the Project comprise a multifamily residential rental housing development, as contemplated by the Act; and subject to the other provisions of this Agreement, it is presently intended and reasonably expected that any equipment purchased from the proceeds of the Note will be permanently located and exclusively used on the Land and that the Borrower will operate the Project on the Land throughout the term of this Agreement in the normal conduct of the Borrower's business;

(5) The Note is to be issued within the exemption provided under Sections 142(a)(7) and 142(d) of the Code with respect to a "qualified residential rental project" (as defined in the Code), and at least 95% of the net proceeds of the Note will be used for expenditures chargeable to the capital account of the Project.

(6) 100% of the apartment units in the Project will be eligible for low income housing tax credits under Section 42 of the Code.

(7) There is public access to the Project; and, as of the date hereof, the use of the Project as designed and proposed to be operated complies, in all material respects, with all presently applicable development, pollution control, water conservation, and other laws, regulations, rules, and ordinances of the federal government and the State of Minnesota and the respective agencies thereof and the political subdivisions in which the Project is located. All necessary and material approvals of and licenses, permits, consents, and franchises from federal, state, county, municipal, or other governmental authorities having jurisdiction over the Project have been or will be obtained to acquire, construct, install, and operate the Project and the Borrower has obtained all necessary approvals to enter into, execute, and perform its obligations under the Related Documents.

(8) The transferred, unspent proceeds of the Prior Note, together with any other funds to be contributed to the Project by the Borrower or otherwise in accordance with this Agreement, shall be sufficient to pay the costs of completing the Project, and all costs and expenses incidental thereto, and the proceeds of the Note and the Prior Note shall be used only for the purposes contemplated hereby and allowable under the Act.

(9) The Borrower is not in the trade or business of selling properties such as the Project and is rehabilitating the Project for investment purposes only or otherwise for use by the Borrower in its trade or business, and therefore the Borrower has no intention now or in the foreseeable future to voluntarily sell, surrender, or otherwise transfer, in whole or part, its interest in the Project, except pursuant to a mortgage.

(10) There are no actions, suits, or proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any property of the Borrower in any court or before any federal, state, municipal, or other governmental agency, which, if decided adversely to the Borrower would have a material adverse effect upon the Borrower or upon the business or properties of the Borrower; and the Borrower is not in default with respect to any order of any court or governmental agency.

(11) The Borrower is not in default in the payment of the principal of or interest on any indebtedness for borrowed money nor in default under any instrument or agreement under and subject to which any indebtedness for borrowed money has been issued.

(12) The Borrower has filed all federal and state income tax returns which, to the knowledge of the General Partner of the Borrower, are required to be filed and has paid all taxes shown on said returns and all assessments and governmental charges received by the Borrower to the extent that they have become due.

(13) No public official of the Issuer has either a direct or indirect financial interest in this Agreement nor will any public official either directly or indirectly benefit financially from this Agreement within the meaning of Minnesota Statutes, Section 412.311, as amended, and Minnesota Statutes, Section 471.87, as amended.

(14) The Borrower has approved the terms and conditions of the Note.

(15) The Borrower will comply with all provisions of the Act, including without limitation any notice and filing requirements imposed under the Act.

(16) The Borrower has not knowingly taken or permitted to be taken and will not knowingly take or permit to be taken any action which would have the effect, directly or indirectly, of causing interest on any of the Note to be included in the gross income of the owners thereof for purposes of federal income taxation.

(17) No obligations, other than the Combined Bonds, have been or will be issued under Section 103 of the Code which are sold at substantially the same time as the Note, pursuant to the same plan of financing, which are reasonably expected to be paid out of substantially the same source of funds as the Note.

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### ARTICLE III

#### LOAN TO THE BORROWER

Section 3.1. Amount and Source of Loan. The Issuer has authorized the issuance of the Note and the loan of the proceeds thereof to the Borrower to refund the Prior Note, the transferred proceeds of which are to be applied to the payment of Project Costs. The Issuer agrees to lend to the Borrower, upon the terms and conditions set forth herein and in the Note, the proceeds of the Note by causing such sums to be advanced to the Borrower upon satisfaction of all terms and conditions set forth herein and in the Loan Purchase Agreement and the Related Documents.

Section 3.2. Disbursement of the Loan. Pursuant to this Agreement and the Act, the Issuer has authorized the Borrower to provide directly for the financing of the Project in such manner as determined by the Borrower and hereby authorizes the Lender to advance the entire proceeds of the Note to refund the Prior Note. The unspent transferred proceeds of the Prior Note which become transferred proceeds of the Note upon the refunding of the Prior Note will be disbursed on the date of Closing to pay Issuance Expenses and Project Costs. Prior to any advance of the proceeds of the Note, the Borrower shall deliver to the Lender executed copies of the following:

- (1) The Note.
- (2) This Agreement.
- (3) The Assignment of Loan Agreement.
- (4) The Regulatory Agreement.
- (5) The Guaranty.
- (6) The approving resolutions of the Borrower and the General Partner.
- (7) Certificate of good standing for the Borrower and the General Partner of recent date issued by the Secretary of State of Minnesota.
- (8) Copies of the organizational documents of the Borrower and the General Partner, certified by the Secretary of State of Minnesota, as applicable (together with copies of all amendments thereto), certified by the Borrower and the General Partner, to be true and correct copies of such instruments.
- (9) An opinion of Bond Counsel to the effect that the Issuer has duly authorized the Note and that the interest thereon is exempt from federal income taxation and subject to other conditions acceptable to the Lender.
- (10) Any other items reasonably required by the Lender.

Section 3.3. Repayment of the Loan. Subject to the prepayment provisions set forth in Sections 5.1 and 5.2 and in the Note, the Borrower agrees to repay the Loan by making all payments of principal, interest, redemption price, and any premium, penalty, or charge that are required to be made by the Issuer under the Note at the times and in the amounts provided therein. All payments

shall be made directly to the Lender for the account of the Issuer. The Borrower shall also pay the reasonable fees and expenses of the Issuer, including the Issuer's administrative fee and the reasonable fees and expenses of the Issuer's counsel in connection with issuance of the Note. Notwithstanding anything to the contrary, for so long as HUD is the holder or insurer of a loan encumbering the Project, all payments on the Loan shall be made solely from the collateral pledged under the Security Documents securing the Loan, from the Guaranty, from insurance proceeds or from "Surplus Cash" as defined in the HUD Regulatory Agreement. No claims shall be made under this Loan Agreement against the Project, FHA Lender, or the Borrower, except for claims related to collateral pledged under the Security Documents securing the Loan, proceeds of the FHA Insured Mortgage Loan, or any reserves or deposits required by HUD in connection with the Project, or the rents or deposits or other income of the Project.

Section 3.4. Borrower's Obligations Unconditional. All payments required of the Borrower hereunder shall be paid without notice or demand and without setoff, counterclaim, abatement, deduction, or defense. The Borrower will not suspend or discontinue any payments, and will perform and observe all of its other agreements in this Agreement, and, except as expressly permitted herein, will not terminate this Agreement for any cause, including but not limited to any acts or circumstances that may constitute failure of consideration, destruction or damage to the Project, eviction by paramount title, commercial frustration of purpose, bankruptcy or insolvency of the Issuer or the Lender, change in the tax or other laws or administrative rulings or actions of the United States of America or of the State of Minnesota or any political subdivision thereof, or failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Agreement, the Assignment of Loan Agreement, or the Note.

Section 3.5. Borrower's Remedies. Nothing contained in this Article shall be construed to release the Issuer from the performance of any of its agreements in this Agreement.

Section 3.6. Administrative Fee. The Borrower agrees to pay to the Issuer an administrative fee equal to: (i) one-half percent (0.50%) of the aggregate principal amount of the Combined Bonds, payable on the date of Closing; and (ii) on the anniversary of the date of Closing and each anniversary thereafter while the Combined Bonds are outstanding, an amount equal to one-tenth percent (0.10%) of the average amount of the outstanding principal amount of the Note during the previous twelve months (the "Annual Administrative Fee"). The administrative fee is not pledged to payment of the Note and may be used by the Issuer for any proper purpose of the Issuer.

Section 3.7. Loan Origination Fee. The Borrower agrees to pay to the Lender a loan origination fee of \$[52,500.00] (representing one percent (1.0%) of the total principal amount of the Note) payable on the date of the Closing.

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## ARTICLE IV

### BORROWER'S COVENANTS

Section 4.1. Financial Reporting. The Borrower will deliver to the Lender financial information of the Borrower upon such terms and conditions as are imposed by the terms of the Loan Purchase Agreement.

Section 4.2. Indemnity. The Borrower will, to the extent permitted by law, pay, and will protect, indemnify, and save the Issuer, its officers, agents, and employees harmless from and against all liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees and expenses), causes of action, suits, claims, demands, and judgments of any nature (collectively, "Losses") arising from:

- (1) any injury to or death of any person or damage to property in or upon the Project or growing out of or connected with the use, non-use, condition, or occupancy of the Project or a part thereof;
- (2) violation of any agreement or condition of this Agreement, except by the Issuer;
- (3) violation of any contract, agreement, or restriction by the Borrower relating to the Project;
- (4) violation of any law, ordinance, or regulation affecting the Project or a part thereof or the ownership, occupancy, or use thereof, or arising out of this Agreement, the Note, or the transactions contemplated thereby, including any requirements imposed on the Lender as a financial institution or any disclosure or registration requirements imposed by any federal or state securities law; and
- (5) any statement or information relating to the expenditure of the proceeds of the Note or the Prior Note contained in the Borrower Tax Certificate or similar document furnished by the Borrower to the Issuer which, at the time made, is misleading, untrue, or incorrect in any material respect.

Notwithstanding the foregoing, the Borrower shall not be responsible for any Losses arising from the willful misconduct or gross negligence of the Issuer, its officers, agents, or employees. Further, the Borrower's source of payment of any indemnification costs found under this Section 4.2, for so long as HUD is the insurer or holder of a loan encumbering the Project will be limited to available liability insurance proceeds, collateral pledged under the Security Documents securing the Loan, from the Guaranty, and/or Surplus Cash, as such term is defined in the Regulatory Agreement for Multifamily Projects by and between the Borrower and HUD.

Section 4.3. Reports to Governmental Agencies. The Borrower will furnish to agencies of the State of Minnesota, including but not limited to the Minnesota Housing Finance Agency, such periodic reports or statements as are required under the Act or Minnesota Statutes, Chapter 474A, as amended, or as they may otherwise reasonably require of the Issuer or the Borrower throughout the term of this Agreement in connection with the transaction contemplated herein; provided, however, the Issuer shall promptly notify the Borrower of any reports or statements being required by agencies of

the State of which the Issuer has received notice to allow the Borrower a reasonable and adequate amount of time to prepare and submit any such reports or statements. Copies of such reports will be provided, upon request, to the Issuer and, upon request, to the Lender.

Section 4.4. Security for the Loan. As additional security for the Loan, and to induce the Issuer to issue and deliver the Note, the Borrower agrees to execute and deliver the Related Documents and such other documents reasonably requested by the Issuer, the Lender, or Counsel, in such places and in such manner as the Issuer, the Lender, or Counsel deems necessary or desirable to perfect or protect the security interest of the Lender in and to the Project and other collateral referred to in such documents; provided that no such instruments or acts shall change the economic terms of the transactions described herein or expand the liabilities of the parties hereunder without the consent of all the parties hereto.

Section 4.5. Preservation of Tax Exemption.

(1) In order to ensure that interest on the Note shall at all times be excludable from gross income for federal income tax purposes, the Borrower represents, warrants, and covenants with the Issuer and the Lender that it will comply with the applicable provisions of Section 103 and Sections 141 through 150 of the Code and applicable Treasury Regulations promulgated thereunder as follows:

(a) The Borrower will have acquired title to the Land on or before the date of delivery of the Note and no more than 25% of the net proceeds of the Combined Bonds or the Prior Note will be allocated to the acquisition of the land; the Project will continue to be owned and operated by the Borrower, except as provided in Section 4.6, and in no event will the Project be managed in a manner that would cause interest on the Note to be includable in gross income for federal income tax purposes.

(b) The Borrower will fulfill all continuing conditions specified in Section 142 of the Code and Section 1.103-8(b) of the Treasury Regulations applicable thereunder, to qualify the Note as an “exempt facility bond” issued to provide a “qualified residential rental project” thereunder and to qualify the Project as a “qualified residential rental project” thereunder; and the Borrower shall fulfill its obligations under the Regulatory Agreement.

(c) At least 95% of the net proceeds of the Combined Bonds will be used to finance costs properly chargeable to the capital account of a “qualified residential rental project,” and functionally related and subordinate property thereto, within the meaning of Section 142(d) of the Code, and Rehabilitation Expenditures with respect to the Building shall equal or exceed 15% of the portion of the cost of acquiring the Building financed with the proceeds of the Combined Bonds and such Rehabilitation Expenditures shall be incurred on or before the date that is 2 years after the later of: (i) the date on which the Building was acquired by the Borrower; or (ii) the date on which the Note was issued.

(d) The Borrower understands that the Code imposes a penalty for failure to file with the Secretary of the Treasury an annual certification of compliance with low income occupancy requirements (currently under an Annual Certification of a Residential Rental Project, Form 8703 (Rev. September 2013)), and if the requirements for a “qualified residential rental project” are not met, does not allow deduction for interest paid on the Note which accrues during the period beginning on the first day of the taxable year in which the Project ceases to meet such requirements and ending on the date the Project again meets such requirements.

(e) In order to qualify the Combined Bonds and this Agreement under the “governmental program” provisions of Section 1.148-2(d)(2)(iii) of the Treasury Regulations, the Borrower (and any “related person” thereto) will take no action the effect of which would be to disqualify this Agreement as a “program investment” under Section 1.148-1(b), including but not limited to entering into any arrangement, formal or informal, for the Borrower or any related person to purchase any obligations that finance the program in an amount related to the amount of the Agreement.

(f) The Borrower has not paid or incurred any costs (except for “preliminary expenditures” (within the meaning of Treasury Regulations, Section 1.150-2(f)(2)) for the Project, including engineering or architectural expenses and similar preparatory expenses, which in the aggregate do not exceed 20% of the aggregate “issue price” of the Combined Bonds, or expenditures in the de minimis amount of \$100,000 (as defined in Treasury Regulations, Section 1.150-2(f)(1)) to be reimbursed from proceeds of the Note before the date 60 days before July 18, 2017, the date of adoption by the City Council of the City on behalf of the Issuer of a preliminary resolution which complies with the provisions of Treasury Regulations, Section 1.150-2(d) and (e), as a written declaration of official intent to reimburse expenditures.

(g) The weighted average maturity of the Note will not exceed the estimated economic life of the Project by more than 20%, all within the meaning of Section 147(b) of the Code.

(h) While the Note remains outstanding, no portion of the proceeds of the Note or the Prior Note will be used to provide any airplane, skybox or other private luxury box, any facility primarily used for gambling, or a store, the principal business of which is the sale of alcoholic beverages for consumption off premises.

(i) Any Issuance Expenses financed by the Note shall not exceed 2% of the proceeds of the Combined Bonds. Except as permitted by Treasury Regulations 1.148-6(d)(3)(ii), none of the proceeds of the Note will be used for working capital purposes.

(j) The Borrower agrees it will not use the proceeds of the Note or the Prior Note in such manner as to cause the Note or the Prior Note to be an “arbitrage bond” within the meaning of Section 148 of the Code and applicable Treasury Regulations.

(k) The Borrower, on behalf of the Issuer, shall pay to the United States, as a rebate, an amount equal to the sum of (A) the excess of (i) the aggregate amount earned on all nonpurpose investments (other than investments attributable to an excess described in this clause), over (ii) the amount which would have been earned if all nonpurpose investments were invested at a rate equal to the yield on the Combined Bonds, plus (B) any income attributable to the excess described in clause (A), at the times and in the amounts required by Section 148(f) of the Code and applicable Treasury Regulations, all within the meaning of Section 148(f) of the Code and applicable Treasury Regulations. The Borrower shall maintain records of the interest rate borne by the Combined Bonds and earnings thereon in adequate detail to enable the Borrower to calculate the amount of any rebate required to be made to the United States at times and in installments which satisfy Section 148(f) of the Code and applicable Treasury Regulations, at least once every 5 years and within 60 days after the day on which the Combined Bonds are paid in full. Calculations of the amount to be rebated shall

be made at least once every 5 years (or at such other times as may be required by Section 148(f) of the Code and applicable Treasury Regulations) and the Lender shall be furnished with such calculations within 60 days of the time they are made. If the Lender is not furnished with such calculations, the Lender may undertake to have such calculations made at the expense of the Borrower. Such calculations shall be retained until 6 years after the Combined Bonds are paid in full. The rebate shall be calculated as provided in Section 148(f) of the Code and Treasury Regulations, Sections 1.148-0 through 1.148-9, including taking into account the gain or loss on the disposition of nonpurpose investments. The Borrower shall acquire, and shall cause the Lender to acquire, all nonpurpose investments at their fair market value in arm's length transactions.

(l) The Borrower has not leased, sold, assigned, granted, or conveyed and will not lease, sell, assign, grant, or convey all or any portion of the Project or any interest therein to the United States, or any agency or instrumentality thereof, within the meaning of Section 149(b) of the Code.

(m) In addition to the Combined Bonds, no other obligations have been or will be issued under Section 103 of the Code which are sold at substantially the same time as the Combined Bonds pursuant to a common plan of marketing and at substantially the same rate of interest as the Combined Bonds and which are payable in whole or part by the Borrower or otherwise have with the Combined Bonds any common or pooled security for the payment of debt service thereon, or which are otherwise treated as the same "issue of obligations" as the Combined Bonds under Treasury Regulations, Section 1.50(1)(c)(1).

(n) The Borrower will observe the requirements of this Agreement with respect to the obligations imposed by applicable provisions of the Code and the representations, warranties, covenants, and requirements of the Borrower Tax Certificate.

(o) No proceeds of the Note or the Prior Note shall be invested in investments which cause the Note to be federally guaranteed within the meaning of Section 149(b) of the Code.

(p) The Borrower will not otherwise use proceeds of the Note or Prior Note, or take or fail to take any action, the effect of which would be to impair the exclusion of interest on the Note from gross income for federal income tax purposes.

(2) For the purpose of this Section, a "Determination of Taxability" shall mean the issuance of a statutory notice of deficiency by the Internal Revenue Service, or a ruling of the National Office or any District Office of the Internal Revenue Service, or a final decision of a court of competent jurisdiction, or a change in any applicable federal statute, which holds or provides in effect that the interest payable on a Note is included, for federal income tax purposes under Section 103 of the Code, in the gross income of the Lender or any other holder or prior holder of such Note, if the period, if any, for contest or appeal of such action, ruling, or decision by the Borrower or Lender or any other interested party has expired without any such contest or appeal having been properly instituted by the Lender, the Borrower, or any other interested party. The expenses of any such contest shall be paid by the party initiating the contest, and neither the Lender nor the Borrower shall be required to contest or appeal any Determination of Taxability. The "Date of Taxability" shall mean that point in time, as specified in the determination, ruling, order, or decision, that the interest payable on a Note becomes included in the gross income of the Lender or any other holder or prior holder of such Note, as the case may be, for federal income tax purposes.

(3) If the Lender receives notice of a “Determination of Taxability” with respect to the Note and delivers to the Borrower a copy of that notice, the rate of interest on the Note shall be automatically adjusted and additional charges shall be paid as provided in the Note and the Borrower shall be obligated to pay the same as provided in Section 3.4 herein.

(4) If the Borrower becomes aware of a Determination of Taxability it will promptly give notice of such Determination of Taxability to the Issuer and the Lender.

Section 4.6. Lease or Sale of Project. Except as permitted under the terms of the Loan Purchase Agreement, the Borrower shall not lease, sell, convey, or otherwise transfer the Project, in whole or part, without first securing the written consent of the Lender; provided that in no event shall any lease, transfer, assignment, or sale be permitted if the effect thereof would be to cause the Note to be deemed issued in violation of the requirement under Section 142(a) of the Code, and the Treasury Regulations promulgated thereunder, that substantially all of the net proceeds of the Note and the Prior Note be used to provide a qualified residential rental project, or under the Act that no portion of the Project to be financed or refinanced from proceeds of the Note or the Prior Note be acquired in whole or part for sale, nor shall any such transaction be permitted if the effect thereof would otherwise be to impair the validity or the tax-exempt status of the Note, nor shall any such transaction release the Borrower of any of its obligations under this Agreement. The Borrower shall promptly notify the Issuer and the Lender of any such sale, transfer, assignment, or lease. Nothing contained in this Section shall prohibit the Borrower from (a) entering into leases with residential tenants in the ordinary course of business, or (b) entering into easement or other agreements necessary for the operation of the Project. Any transfer of any interest in the Borrower shall require the consent of the Lender, which shall not be unreasonably withheld, delayed or conditioned. Notwithstanding anything to the contrary contained herein, the following shall be permitted and shall not require the consent of the Lender: (i) the transfer by WNC Holding, LLC, a California limited liability company, to the Investor Limited Partner of its interests in Borrower, and (ii) the removal and replacement of the General Partner of the Borrower in accordance with the Partnership Agreement; provided, the Lender is provided a copy of written notice of replacement of the General Partner and the name and contact information of the replacement general partner.

Section 4.7. Project Operation and Maintenance Expenses.

(1) The Borrower shall pay all expenses of the operation and maintenance of the Project including, but without limitation, adequate insurance thereon and insurance against all liability for injury to persons or property arising from the operation thereof and all taxes and special assessments levied upon or with respect to the Project and payable during the term of this Agreement, all in conformance with the provisions of the Loan Purchase Agreement.

(2) The Project shall not be used for purposes which violate any federal, State or other laws prohibiting discrimination in access or employment based on race, creed, sex, handicap, ethnic origin, age or marital status.

Section 4.8. Notification of Changes. The Borrower covenants and agrees that it will promptly notify the Issuer and the Lender of:

(1) any litigation which might materially and adversely affect the Borrower and any of its properties;

(2) the occurrence of any Event of Default under this Agreement the occurrence of any “Event of Default” under the Related Documents or any other loan agreement, debenture, note, purchase agreement, or other agreement providing for the borrowing of money by the Borrower or any event of which the Borrower has knowledge and which, with the passage of time or giving of notice, or both, would constitute an Event of Default under this Loan Agreement or an “Event of Default” under the Related Documents or such other agreements; and

(3) any material adverse change in the operations, business, properties, assets, or conditions, financial or otherwise, of the Borrower.

Section 4.9. Maintenance of Facility as Qualified Residential Rental Project. The Borrower covenants that following its acquisition and rehabilitation of the Project and subject to the provisions of any recorded document amending, terminating, or deleting such covenants, the Project is to be owned, operated, and managed as a “qualified residential rental project” within the meaning of Section 142(d) of the Code. To that end, the Borrower further represents, covenants and agrees that it shall fulfill its obligations under the Regulatory Agreement.

Section 4.10. Compliance with Issuer’s Private Activity Bond Policy. The Borrower agrees to comply with the Issuer’s post-issuance compliance policy related to tax-exempt financing.

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**ARTICLE V****PREPAYMENT OF LOAN**

Section 5.1. Prepayment at Option of Borrower. The Borrower may at its option prepay the Loan, in whole or in part, by prepaying a like amount of the Principal Balance of the Note, but only in the manner, at the times and under the conditions provided in the Note.

Section 5.2. Termination Upon Retirement of the Note. At such time as (a) no Principal Balance on the Note remains outstanding, (b) any obligation of the Lender to advance funds under this Agreement, the Note, the Loan Purchase Agreement, or the Related Documents has expired, and (c) arrangements satisfactory to the Lender and the Issuer have been made for the prepayment or discharge of all other accrued liabilities, if any, under the Related Documents, this Agreement will by its terms terminate and any and all obligations of Borrower and Guarantors under the Loan Documents will be deemed satisfied.

Section 5.3. Partial Prepayment. If the Loan is prepaid hereunder only in part, the Lender shall apply any prepayment first against reasonable attorneys' fees and collection costs, second against accrued interest due under the Note, and then against the Principal Balance due under the Note; and the Borrower shall continue to pay in full the monthly payments due under the Note until the entire Principal Balance and accrued interest due on the Note and any other charges or premiums due hereunder or under the Note have been paid.

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## ARTICLE VI

### EVENTS OF DEFAULT AND REMEDIES

Section 6.1. Events of Default. Any one or more of the following events continuing beyond any applicable cure period is an Event of Default under this Agreement:

(1) If the Borrower shall fail to make any payments required under this Agreement on or before the date that the payment is due and such default continues for 10 business days.

(2) If the Borrower shall fail to observe and perform any other covenant, condition, or agreement on its part under this Agreement for a period of 30 days after written notice (a "Default Notice"), specifying such default and requesting that it be remedied, given to the Borrower by the Issuer or the Lender, or for such longer period as may be reasonably necessary to remedy such default provided that the Borrower is proceeding with reasonable diligence to remedy the same, but not exceeding 90 days after the Default Notice is given, unless the Lender shall agree in writing to an extension of such time prior to its expiration.

(3) If the Borrower shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any present or future federal bankruptcy act or under any similar federal or state law, shall consent to the entry of an order for relief pursuant to any present or future federal bankruptcy act or under any similar federal or state law, or shall make an assignment for the benefit of its creditors or shall admit in writing its inability to pay its debts generally as they become due, or if a petition or answer proposing the entry of an order for relief of the Borrower under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be filed in any court and such petition or answer shall not be discharged or denied within 180 days after the filing thereof, or a receiver, trustee, or liquidator of the Borrower or all or substantially all of the assets of the Borrower, or of the Project, shall be appointed in any proceeding brought against the Borrower and shall not be discharged within 180 days after such appointment or if the Borrower shall consent to or acquiesce in such appointment, or if the estate or interest of the Borrower in the Project or a part thereof shall be levied upon or attached in any proceeding and such process shall not be vacated or discharged within 180 days after such levy or attachment.

(4) If the Partnership Agreement of the Borrower shall expire or be annulled; if the Partnership Agreement of the Borrower shall be amended or modified without the consent of the Lender, which shall not be unreasonably delayed, withheld or conditioned; or if the Borrower shall be dissolved or liquidated (other than when a new entity assumes the obligations of the Borrower under the conditions permitting such action contained in Section 4.6). Notwithstanding anything to the contrary contained herein, amendments to effect pre-approved transfers and amendments that correct scrivener's errors or do not adversely impact the Lender's rights or the Borrower's obligations under the Loan Documents shall be permitted; provided, the Lender is provided a copy of any such amendment.

(5) If any representation or warranty made by the Borrower herein, or by an officer or representative of the Borrower in any document or certificate furnished the Lender or the Issuer in connection herewith or therewith or pursuant hereto or thereto, shall prove at

any time to be, in any material respect, incorrect or misleading as of the date made, and is not cured within 60 days after a Default Notice, specifying such default and requesting that it be remedied, has given to the Borrower by the Issuer or the Lender.

(6) If the Borrower shall default or fail to perform any covenant, condition, or agreement on its part under any of the Related Documents or any other security document securing the Note, and such failure continues beyond the period, if any, set forth in such documents during which the Borrower may cure the default.

Any partner of the Borrower shall have the right, but not the obligation, to cure any default under this Agreement within the same cure period afforded to the Borrower to cure such default.

Section 6.2. Remedies. Whenever any Event of Default referred to in Section 6.1 hereof shall have happened and be subsisting, any one or more of the following remedial steps, to the extent permitted by law, may be taken by the Issuer with the prior written consent of the Lender (except that rights arising under the sections listed in Section 7.10 hereof may not require such consent in order to be exercised by the Issuer) or by the Lender itself:

(1) The Issuer, upon written direction of the Lender, or the Lender may declare all installments of the Loan (being an amount equal to that necessary to pay in full the Principal Balance plus accrued interest thereon and any premium due thereunder of the Note assuming acceleration of the Note under the terms thereof and to pay all other indebtedness thereunder) to be immediately due and payable, whereupon the same shall become immediately due and payable by the Borrower; or

(2) The Issuer, upon written direction of the Lender (except as otherwise provided in Section 7.10 herein), or the Lender (in either case at no expense to the Issuer) may take whatever action at law or in equity may appear necessary or appropriate to collect the amounts then due and thereafter to become due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant of the Borrower under this Agreement.

(3) The Lender may exercise its rights under the Guaranty.

In addition, the Lender will have such remedies as are provided in the Assignment of Loan Agreement upon an Event of Default under this Agreement.

Section 6.3. Disposition of Funds. Notwithstanding anything to the contrary contained in this Agreement, any amounts collected, up to the amounts due, pursuant to action taken under Section 6.2 hereof, except for any amounts collected solely for the benefit of the Issuer under any of the provisions set forth in Section 7.10, shall, after deducting all expenses incurred in collecting the same, be applied as a prepayment of the Note in accordance with Section 5.1.

Section 6.4. Manner of Exercise. No remedy herein conferred upon or reserved to the Issuer or the Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Lender to exercise any remedy reserved to either of them in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

Section 6.5. Attorneys' Fees and Expenses. In the event the Borrower should default under any of the provisions of this Agreement and the Issuer or the Lender should employ attorneys or incur other expenses for the collection of amounts due hereunder or the enforcement of performance of any obligation or agreement on the part of the Borrower, the Borrower will on demand pay to the Issuer or the Lender the reasonable fees and costs of such attorneys and such other expenses so incurred.

Section 6.6. Effect of Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

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**ARTICLE VII**

**GENERAL**

Section 7.1. Notices. All notices, certificates, or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by certified or registered mail, postage prepaid, with proper address as indicated below. The Issuer, the Borrower, and the Lender may, by written notice given by each to the others, designate any address or addresses to which notices, certificates, or other communications to them shall be sent when required as contemplated by this Agreement. Until otherwise provided by the respective parties, all notices, certificates, and communications to each of them shall be addressed as follows:

To the Issuer	City of Brooklyn Park, Minnesota 5200 85th Avenue N. Brooklyn Park, MN 55443 Attn: City Finance Director
To the Borrower:	Amorce I Limited Partnership c/o Boisclair Corporation 3033 Excelsior Blvd, Suite 215 Minneapolis, MN 55416 Attention: Lori Boisclair, President
With a copy to:	Winthrop & Weinstine, P.A. Capella Tower, Suite 3500 225 South Sixth Street Minneapolis, MN 55402-4629 Attn: Todd B. Urness, Esq. and Erin E. Mathern, Esq.
and Investor Limited Partner:	WNC Holding, LLC c/o WNC & Associates, Inc. 37 West Bridge Street, Suite 203 Dublin, OH 43017 Attn: Michael Simmerman
With a copy to	Barnes & Thornburg LLP 41 South High Street, Suite 3300 Columbus, OH 43215-6104 Attention: Phillip R. Westerman, Esq.
To the Lender:	Bridgewater Investment Management, Inc. 7831 East Bush Lake Road, Suite 300 Bloomington, MN 55439 Attn: Nicholas Place, President

With a copy to: Messerli & Kramer P.A.  
100 South Fifth Street, Suite 1400  
Minneapolis, MN 55402  
Attn: Michelle Jester, Esq.

Section 7.2. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Issuer and the Borrower and their respective successors and assigns.

Section 7.3. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 7.4. Amendments, Changes and Modifications. Except as otherwise provided in this Agreement or in the Resolution, subsequent to the initial issuance of the Note and before the Note is satisfied and discharged in accordance with their respective terms, this Agreement may not be effectively amended, changed, modified, altered, or terminated without the written consent of the Lender.

Section 7.5. Execution Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7.6. Limitation of Issuer's Liability. No covenant, provision or agreement of the Issuer herein or in the Note or in any other document executed by the Issuer (or any other party) in connection with the issuance, sale and delivery of the Note, or any obligation herein or therein imposed upon the Issuer or respecting the breach thereof, shall give rise to a pecuniary liability of the Issuer, its officers, employees or agents, or a charge against the Issuer's general credit or taxing powers or shall obligate the Issuer, its officers, employees or agents, financially in any way except with respect to this Agreement and the application of revenues herefrom and the proceeds of the Note or the transferred unspent proceeds of the Prior Note. The Note shall be and constitutes only a special and limited revenue obligation of the Issuer, payable solely from the revenues pledged to the payment thereof pursuant to this Agreement and the Assignment of Loan Agreement, and the Note does not now and shall never constitute an indebtedness, a general or moral obligation or a loan of the credit of the Issuer, the State or any political subdivision thereof or a lien, charge or encumbrance, legal or equitable, against the Issuer's general credit or taxing powers or any of the Issuer's property. No failure of the Issuer to comply with any term, condition, covenant or agreement therein shall subject the Issuer, its officers, employees or agents, to liability for any claim for damages, costs or other financial or pecuniary charges except to the extent that the same can be paid or recovered from this Agreement or revenues therefrom or proceeds of the Note or the Prior Note. No execution on any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or taxing powers of the Issuer. In making the agreements, provisions and covenants set forth herein, the Issuer has not obligated itself except with respect to this Agreement and the application of revenues hereunder as hereinabove provided. It is further understood and agreed by the Borrower and the Lender that the Issuer, its officers, employees or agents shall incur no pecuniary liability hereunder and shall not be liable for any expenses related hereto, all of which the Borrower agrees to pay. If, notwithstanding the provisions of this Section, the Issuer, its officers, employees or agents incurs any expense, or suffers any losses, claims or damages or incurs any liabilities, the Borrower will indemnify and hold harmless the Issuer, its officers, employees or agents from the same and will reimburse the Issuer, its officers, employees or agents for any legal or other expenses incurred by the Issuer, its officers, employees or agents in relation thereto, and this covenant to indemnify, hold

harmless and reimburse the Issuer, its officers, employees or agents shall survive delivery of and payment for the Note and expiration or termination of this Loan Agreement. The liability of the Issuer is further restricted as provided in the Act.

Section 7.7. Issuer's Attorneys' Fees and Costs. The Borrower shall reimburse the Issuer and the Lender, upon demand, for all costs and expenses, including without limitation reasonable attorneys' fees, paid or incurred by the Issuer and the Lender in connection with (i) the discussion, negotiation, preparation, approval, execution, and delivery of the Related Documents and the documents and instruments related hereto or thereto; (ii) any amendments or modifications to any of the foregoing documents, instruments or agreements and the discussion, negotiation, preparation, approval, execution, and delivery of any and all documents necessary or desirable to effect such amendments or modifications; (iii) the servicing and administration of the Loan during the term hereof or thereafter; and (iv) the enforcement by the Issuer and the Lender during the term hereof or hereafter of any of the rights or remedies of the Issuer and the Lender hereunder or under the foregoing documents, or any document, instrument or agreement related hereto or thereto, including, without limitation, costs and expenses of collection in the Event of Default, whether or not suit is filed with respect thereto. Further, the Borrower's source of payment of any indemnification costs or attorneys' fees, or any costs and expenses found under Sections 7.6 and 7.7 of this Loan Agreement, for so long as HUD is the insurer or holder of a loan encumbering the Project will be limited to available liability insurance proceeds, collateral pledged under the Security Documents securing the Loan, from the Guaranty and/or Surplus Cash, as such term is defined in the Regulatory Agreement for Multifamily Projects by and between the Borrower and HUD.

Section 7.8. Release. The Borrower hereby acknowledges and agrees that the Issuer shall not be liable to the Borrower, and hereby releases and discharges the Issuer from any liability, for any and all losses, costs, expenses (including reasonable attorneys' fees), damages, judgments, claims, and causes of action paid, incurred, or sustained by the Borrower as a result of or relating to any action, or failure or refusal to act, on the part of any party with respect to the Note, this Agreement, or the documents and transactions related hereto or thereto or contemplated hereby or thereby, including, without limitation, the exercise by the Lender of any of its rights or remedies pursuant to Article 6, the Note, and the Related Documents or any collateral security documents.

Section 7.9. Audit Expenses. The Borrower agrees to pay any costs incurred by the Issuer as a result of the Issuer's compliance with an audit, random or otherwise, by the Internal Revenue Service or the Minnesota Department of Revenue with respect to the Note, the Borrower, or the Project.

Section 7.10. Assignment by Issuer and Survivorship of Obligations. The Issuer may assign its rights under this Agreement and any related documents to the Lender to secure payment of the principal of and interest and premium, if any, on the Note, conditioned upon the Lender's assumption of the Issuer's and Lender's obligations to the Borrower hereunder, but any such assignment shall not operate to limit or otherwise affect the following provisions hereof to the extent that they run to the Issuer from the Borrower to which extent they shall survive any such assignment: Sections 3.4, 3.6, 4.2, 4.3, 4.5, 4.10, 6.5, 7.6, 7.7, 7.8, 7.9, and 7.10.

Upon any such assignment, the provisions immediately above running to the Issuer from the Borrower for the Issuer's benefit shall run jointly and severally to the Issuer and the Lender (if appropriate), provided that the Issuer shall have the right to enforce any retained rights without the approval of the Lender but only if the Lender is not enforcing such rights in a manner to protect the Issuer or is otherwise taking action with respect thereto that brings adverse consequences to the Issuer. The obligations of the Borrower

running to the Issuer for the purpose of preserving the tax-exempt status of the Note or otherwise for the Issuer's benefit under the foregoing Sections shall survive repayment of the Note and interest thereon.

Section 7.11. Required Approvals. Consents and approvals required by this Agreement to be obtained from the Borrower or the Issuer shall be in writing and shall not be unreasonably withheld or delayed.

Section 7.12. Nature of Borrower's Obligations. The Borrower's obligations under the Agreement, the Note, and the Related Documents are non-recourse to the Borrower at all times the Project is subject to a loan held or insured by HUD. Except during any period in which HUD is the holder or insurer of a loan encumbering the Project, the Borrower's obligations under this Agreement, the Note, and the Related Documents shall be fully recourse to the Borrower during the term of the Note.

Section 7.13. HUD Required Provisions. In addition, the rights and obligations of the parties under this Loan Agreement and all other documents evidencing, implementing, or securing this Loan Agreement and the Note (collectively, the "Subordinate Bond Documents") are and shall be subordinated in all respects to the rights and obligations of the parties to and under the FHA Loan Documents (as defined in the Trust Indenture related to the Series 2019A Bonds). In the event HUD acquires title to the Project by foreclosure or deed in lieu of foreclosure, the Subordinate Bond Documents automatically terminate and the Borrower shall be released of all its obligations with respect to the Loan Agreement. Notwithstanding the foregoing, nothing in this Section 7.13 shall affect, limit, or impair the ability of the Lender to seek a monetary judgment, pursue other remedies against the Guarantors and shall be allowed to name the Borrower to any such suit against the Guarantors for the sole purpose of proving the Borrower's default under the Related Documents and the amounts due and owing thereunder by the Guarantors.

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IN WITNESS WHEREOF, the Issuer and the Borrower have caused this Loan Agreement to be duly executed in their respective names, all as of the date hereinbefore written.

**CITY OF BROOKLYN PARK, MINNESOTA**

By \_\_\_\_\_  
Its Mayor

By \_\_\_\_\_  
Its City Manager

[Signature Page to Loan Agreement]

**AMORCE I LIMITED PARTNERSHIP,**  
a Minnesota limited partnership

By: Amorce I GP LLC,  
a Minnesota limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Lori Boisclair  
Its: President/Chief Manager

[Signature Page to Loan Agreement]

**EXHIBIT A**

**Legal Description of the Land**

The real property located in the City of Brooklyn Park, County of Hennepin, State of Minnesota, legally described as follows:

Brooks Landing:

Parcel 1:

Starting at a point 333 feet East of the Northwest corner of the South 686.6 feet of the Southeast 1/4 of the Northwest 1/4 of Section 28, Township 119, Range 21; thence proceeding East 200 feet along said North line of the South 686.6 feet of the Southeast 1/4 of the Northwest 1/4 of Section 28, Township 119, Range 21; thence proceeding South along a line parallel with the West line of the Southeast 1/4 of the Northwest 1/4 of Section 28, Township 119, Range 21 a distance of 64.75 feet; thence proceeding East a distance of 100 feet along a line parallel to the South line of the Southeast 1/4 of the Northwest 1/4 of Section 28, Township 119, Range 21; thence proceeding North parallel to the West line of the Southeast 1/4 of the Northwest 1/4 of Section 28, Township 119, Range 21 to its intersection with the South line of Twin Brook Center; also being the South line of 74th Avenue North as dedicated in said plat of Twin Brook Center; thence proceeding West along said South line of Twin Brook Center to its intersection with a line extending North parallel with the West line of the Southeast 1/4 of the Northwest 1/4 of Section 28, Township 119, Range 21; thence South along said intersecting line to the point of beginning.

Parcel 2:

Starting at a point 333 feet East of the Northwest corner of the South 686.6 feet of the Southeast 1/4 of the Northwest 1/4 of Section 28, Township 119, Range 21; thence proceeding East 200 feet along said North line of the South 686.6 feet of the Southeast 1/4 of the Northwest 1/4 of Section 28, Township 119, Range 21; thence proceeding South along a line parallel with the West line of the Southeast 1/4 of the Northwest 1/4 of Section 28, Township 119, Range 21, a distance of 64.75 feet; thence proceeding East a distance of 100 feet along a line parallel to the South line of the Southeast 1/4 of the Northwest 1/4 of Section 28, Township 119, Range 21 to the point of beginning; thence proceeding North parallel to the West line of the Southeast 1/4 of the Northwest 1/4 of Section 28, Township 119, Range 21 to its intersection with the South line of Twin Brook Center; also being the South line of 74th Avenue North as dedicated in said plat of Twin Brook Center; thence proceeding East along said South line of Twin Brook Center, a distance of 49 feet; thence South a distance of 269.64 feet parallel with said West line of the Southeast 1/4 of the Northwest 1/4; thence West parallel to the South line thereof to the point of beginning.

Brook Gardens:

The Easterly 577.56 feet of that part of the East 1/2 of the Southwest 1/4 of Section 28, Township 119 North, Range 21 West of the 5th Principal Meridian described as:

Beginning at a point on the South Line thereof distant 465.0 feet East to the Southwest corner of said East 1/2 of the Southwest 1/4; thence North and parallel with the West line thereof a distance of 633.0 feet; thence East parallel with the said South line to the East line of said Southwest 1/4; thence South along the said East Line of the South line of said Southwest 1/4; thence West to the point of beginning.

**Draft**  
**Friday, July 5, 2019**

**[\$5,250,000]**  
**City of Brooklyn Park, Minnesota**  
**Multifamily Housing Revenue Refunding Note**  
**(Amorce I Limited Partnership Project)**  
**Series 2019B**

**ASSIGNMENT OF LOAN AGREEMENT**

This Assignment of Loan Agreement, dated as 5,250,000 (the “Assignment”), is made and entered into between the City of Brooklyn Park, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the “Issuer”), and Bridgewater Investment Management, Inc., a Minnesota corporation (the “Lender”).

**RECITALS**

WHEREAS, Amorce I Limited Partnership, a Minnesota limited partnership, (the “Borrower”) and the Issuer have entered into a Loan Agreement, dated as of the date hereof (the “Loan Agreement”), pursuant to which the Issuer will lend to the Borrower the proceeds derived from the sale to the Lender of its Multifamily Housing Revenue Refunding Note (Amorce I Limited Partnership Project), Series 2019B (the “Series 2019B Note”), issued by the Issuer in the original aggregate principal amount of \$[5,250,000]; and

WHEREAS, the Series 2019B Note (the “Note”) is to be payable from and secured by the loan repayments (the “Loan Repayments”) to be made by the Borrower under the Loan Agreement; and the Lender, as a condition to the purchase of the Note, has required the execution of this Assignment;

NOW THEREFORE, as an inducement to the Lender to purchase the Note, and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. In order to secure the due and punctual payment of the Note and all other sums due the Lender under the Loan Agreement, the Issuer does hereby assign to the Lender all of the Issuer’s right, title, and interest in and to the Loan Agreement, including the Loan Repayments payable by the Borrower thereunder, subject to the Issuer’s rights under the provisions of Section 7.10 thereof.

2. The Issuer hereby represents and warrants to the Lender that the Issuer’s right, title, and interest in the Loan Agreement is free and clear of any lien, security interest, or other encumbrance other than that arising under this Assignment.

3. The Issuer hereby authorizes the Lender to exercise, whether or not a default exists under the Note or an Event of Default has occurred under the Loan Agreement, either in the Issuer’s name or the Lender’s name, any and all rights or remedies available to the Issuer under the Loan Agreement. The Issuer agrees, on request of the Lender, to execute and deliver to the Lender such other documents or instruments as shall be deemed necessary or appropriate by the Lender at any time to confirm or perfect the security interest hereby granted. The Issuer hereby appoints the Lender its attorney-in-fact to execute on behalf of the Issuer, and in its name, any and all such assignments, financing statements, or other documents or

instruments which the Lender may deem necessary or appropriate to perfect, protect, or enforce the security interest hereby granted.

4. The Issuer will not:

(a) exercise or attempt to exercise any remedies under the Loan Agreement, except as permitted by Sections 6.2 and 7.7 of the Loan Agreement, or terminate, modify or accept a surrender of the same, or by affirmative act, consent to the creation or existence of any security interest or other lien in the Loan Agreement to secure payment of any other indebtedness; or

(b) receive or collect or permit the receipt or collection of any payments, receipts, rentals, profits, or other money under the Loan Agreement (except as permitted under Section 7.10 thereof) or assign, transfer, or hypothecate (other than to the Lender hereunder) any of the same then due or to accrue in the future.

5. The Issuer expressly covenants and agrees that the Lender shall be entitled to receive all Loan repayments and other payments under the Loan Agreement (except any payments due the Issuer under Section 7.10 thereof), and hereby authorizes and directs the Borrower to make such Loan repayments and other payments directly to the Lender. The Lender covenants and agrees that all payments received by the Lender pursuant to the Loan Agreement shall be applied as provided in the Loan Agreement, the Note and the Loan Documents (hereafter defined).

6. The Lender agrees to advance the purchase price of the Note directly to the Borrower as provided in the Note, the Loan Agreement, and the other agreements between the Borrower and the Lender entered into in connection with the issuance and delivery of the Note (the "Loan Documents"). In accordance with Section 7.10 of the Loan Agreement, the Lender hereby assumes the Issuer's and Lender's obligations to the Borrower thereunder.

7. If an Event of Default (as defined in the Loan Agreement) shall occur and be continuing after the expiration of any cure rights under the terms of the Loan Agreement, the Lender may exercise any one or more or all, and in any order, of the remedies hereinafter set forth, in addition to any other remedy at law or in equity or specified in the Loan Agreement, it being expressly understood that no remedy herein conferred is intended to be exclusive of any other remedy or remedies; but each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute:

(a) The Lender may, without prior notice of any kind, declare the principal of and interest accrued on the Note immediately due and payable.

(b) The Lender may exercise any rights and remedies and options of a secured party under the Uniform Commercial Code as adopted in the State of Minnesota and any and all rights available to it under the Loan Agreement, or the other Loan Documents.

8. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises, and agreements in this Assignment contained by or on behalf of the Issuer or the Lender shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

9. The unenforceability or invalidity of any provision or provisions of this Assignment shall not render any other provision or provisions herein contained unenforceable or invalid.

10. This Assignment shall in all respects be construed in accordance with and governed by the laws of the State of Minnesota. This Assignment may not be amended or modified except in writing signed by the Issuer and the Lender.

11. This Assignment may be executed, acknowledged, and delivered in any number of counterparts and each of such counterparts shall constitute an original but all of which together shall constitute one agreement.

12. The terms used in this Assignment which are defined in the Loan Agreement shall have the meanings specified therein, unless the context of this Assignment otherwise requires, or unless such terms are otherwise defined herein.

13. No obligation of the Issuer hereunder shall constitute or give rise to a pecuniary liability of the Issuer or a charge against its general credit or taxing powers, but shall be payable solely out of the proceeds and the revenues derived under the Loan Agreement.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Issuer and the Lender have caused this Assignment to be duly executed as of the date first above written.

**CITY OF BROOKLYN PARK, MINNESOTA**

By \_\_\_\_\_  
Its Mayor

By \_\_\_\_\_  
Its City Manager

[Signature page to Assignment of Loan Agreement]

Execution page of the Lender to the Assignment of Loan Agreement.

**BRIDGEWATER INVESTMENT MANAGEMENT,  
INC.**

By: \_\_\_\_\_  
Nicholas Place  
Its President

[Signature page to Assignment of Loan Agreement]

**Draft**  
**Friday, July 5, 2019**

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**REGULATORY AGREEMENT**

**among**

**CITY OF BROOKLYN PARK, MINNESOTA,**  
**as Issuer**

**U.S. BANK NATIONAL ASSOCIATION,**  
**as Trustee**

**and**

**AMORCE I LIMITED PARTNERSHIP,**  
**as Borrower**

Relating to:

**BROOKS LANDING APARTMENTS**  
5825 74th Avenue North, Brooklyn Park, Minnesota

**Dated as of August 1, 2019**

---

This Instrument Drafted by:

Kennedy & Graven, Chartered (SEL)  
470 US Bank Plaza  
200 South Sixth Street  
Minneapolis, Minnesota 55402

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HUD RIDER TO RESTRICTIVE COVENANTS

## REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT, dated as of August 1, 2019 (the “Regulatory Agreement”), is made and entered into among the CITY OF BROOKLYN PARK, MINNESOTA, a home rule charter city and political subdivision organized under its charter and the laws of the State of Minnesota (the “Issuer” or “City”), U.S. BANK NATIONAL ASSOCIATION, a national banking association (the “Trustee”), and AMORCE I LIMITED PARTNERSHIP, a Minnesota limited partnership (the “Borrower”).

### RECITALS

The Issuer is authorized to issue bonds to provide financing for multifamily housing developments in accordance with the terms of Minnesota Statutes, Chapters 462C and 462A, as amended.

For the purpose of refunding the outstanding Multifamily Housing Revenue Note (Amorce I Limited Partnership Project), Series 2017, dated May 9, 2017 (the “Prior Note”), issued by the Issuer in the original aggregate principal amount of \$15,000,000 to finance the acquisition and rehabilitation of 170 units of multifamily rental apartments, and facilities functionally related and subordinate thereto, commonly known as Brooks Landing Apartments (“Brooks Landing”) and Brook Gardens Apartments and Townhomes (“Brook Gardens”), located at 5825 74th Avenue North and 5550 69th Avenue North, respectively, in the City, the Issuer will issue its (i) Multifamily Housing Revenue Refunding Bonds (Amorce I Limited Partnership Project), Series 2019A (the “Series 2019A Bonds”), in the original aggregate principal amount of \$[8,540,000], pursuant to the terms of a Trust Indenture, dated as of August 1, 2019 (the “Indenture”), between the Issuer and the Trustee, and (ii) Multifamily Housing Revenue Refunding Note (Amorce I Limited Partnership Project), Series 2019B (the “Series 2019B Note and, together with the Series 2019A Bonds, the “Bonds”), in the original aggregate principal amount of \$[5,250,000].

The Issuer will loan the proceeds derived from the sale of the Series 2019A Bonds to the Borrower pursuant to the terms of a Loan Agreement, dated as of August 1, 2019 (the “Series 2019A Loan Agreement”), between the Issuer and the Borrower, and will loan the proceeds derived from the sale of the Series 2019B Note to the Borrower pursuant to the terms of a Loan Agreement, dated as of August [\_\_\_], 2019 (the “Series 2019B Loan Agreement” and, together with the Series 2019A Loan Agreement, the “Loan Agreements”), between the Issuer and the Borrower to refinance the acquisition and rehabilitation of Brooks Landing (the “Brooks Landing Project”) and Brook Gardens (the “Brook Gardens Project”).

For good and valuable consideration, the Borrower, the Trustee, and the Issuer have determined to enter into this Regulatory Agreement in order to impose certain requirements of the Code and of the Act (each as hereinafter defined) applicable to Brooks Landing, legally described on Exhibit A hereto.

NOW, THEREFORE, the Borrower, the Trustee, and the Issuer do hereby impose upon the Brooks Landing Project the following covenants, restrictions, charges, and easements, which shall run with the land and shall be binding and a burden upon the Brooks Landing Project and all portions thereof, and upon any purchaser, grantee, owner, or lessee of any portion of the Brooks Landing Project and any other person or entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors, and assigns of any purchaser, grantee, owner, or lessee of any portion of the Brooks Landing Project and any other person or entity having any right, title, or interest therein, for the length of time that this Regulatory Agreement shall be in full force and effect:

**Section 1. Definitions.** Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the terms defined above shall have the meanings set forth above and the following terms

shall have the respective meanings set forth below for the purposes hereof. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Indenture.

“*Act*” means Minnesota Statutes, Chapters 462C and 462A, as amended.

“*Adjusted Income*” means the adjusted income of a person (together with the adjusted income of all persons of the age of 18 years or older who intend to reside with such person in one Dwelling Unit), as calculated in the manner prescribed under Section 142(d)(2)(B) of the Code.

“*Bond Counsel*” means Kennedy & Graven, Chartered, or any other attorney at law or firm of attorneys, of nationally-recognized standing in matters pertaining to the federal tax exemption of interest on bonds and other obligations issued by states and political subdivisions thereof, duly admitted to practice law before the highest court of any state of the United States of America.

“*Bond Resolution*” means Resolution No. [\_\_\_\_], adopted by the Issuer on July 22, 2019 authorizing the issuance and delivery of the Bonds.

“*Bonds*” means, collectively, the Series 2019A Bonds and the Series 2019B Note.

“*Borrower*” means Amorice I Limited Partnership, a Minnesota limited partnership, and its lawful successors and assigns to the extent permitted by the Loan Agreements.

“*Brooks Landing Project*” has the meaning assigned to such term in the recitals to this Regulatory Agreement.

“*Certificate of Continuing Program Compliance*” means the document substantially in the form of EXHIBIT C hereto.

“*City*” means the City of Brooklyn Park, Minnesota.

“*Code*” means the Internal Revenue Code of 1986, as amended, and all applicable regulations (whether proposed, temporary or final) under the Code and the statutory predecessor of the Code, and any official rulings and judicial determinations under the foregoing applicable to the Bonds.

“*County*” means Hennepin County in the State.

“*Dwelling Units*” means the units of multifamily residential rental housing comprising the Project, excluding any unit used as a management office.

“*Event of Default*” has the meaning specified in Section 13 hereof.

“*Functionally Related and Subordinate*” shall mean and include facilities for use by tenants, for example, laundry facilities, parking areas, and recreational facilities, provided that the same is of a character and size commensurate with the character and size of the Project.

“*Housing Act*” means the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq.

“*Indenture*” means, the Trust Indenture, dated August 1, 2019, between the Issuer and the Trustee, its successors and assigns, related to the Series 2019A Bonds.

“*Issuer*” means the City of Brooklyn Park, Minnesota, a home rule charter city and political subdivision organized under its charter and the laws of the State of Minnesota.

“*Land*” means the real property described on EXHIBIT A attached hereto.

“*Loans*” means collectively, each of the loans provided by the Issuer to the Borrower pursuant to the Loan Agreements to provide refinancing for the Brooks Landing Project and Brook Gardens Project.

“*Loan Agreements*” means, collectively the Series 2019A Loan Agreement and the Series 2019B Loan Agreement.

“*Low Income Tenants*” means persons or families with Adjusted Income which does not exceed 60% of the Median Income for the Area adjusted for household size. In no event will the occupants of a unit be considered to be Low Income Tenants if all of such occupants are students (as defined in Section 152(f)(2) of the Code), unless the unit is occupied:

(i) by an individual who is (A) a student and receiving assistance under Title IV of the Social Security Act, (B) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under Part B or Part E of Title IV of the Social Security Act, or (C) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar federal, State, or local laws; or

(ii) entirely by full-time students if such students are (A) single parents and their children and such parents are not dependents (as defined in Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual and such children are not dependents (as defined in Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual other than a parent of such children, or (B) married and entitled to file a joint return.

“*Low Income Units*” means the Dwelling Units in the Project designated for occupancy by Low Income Tenants pursuant to Section 4(a) of this Regulatory Agreement.

“*Median Income for the Area*” means the median yearly income for households of an applicable size in the applicable Primary Metropolitan Statistical Area as most recently determined by the Secretary of Housing and Urban Development under Section 8(f)(3) of the Housing Act, or, if such figures are no longer available, the method of calculation is substantially altered, or the programs under Section 8(f) are terminated, the Issuer shall provide the Borrower with another income determination that is reasonably similar to the method used by the Secretary prior to such termination.

“*Project*” has the meaning assigned to such term in the recitals to this Regulatory Agreement.

“*Qualified Project Period*” means the period beginning on the later of the date of issuance of the Bonds and the first day on which 10% of the Dwelling Units in the Project are occupied and ending on the latest of:

(i) the date which is 15 years after the date on which 50% of the Dwelling Units in the Project are occupied;

(ii) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding, or

(iii) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates.

“*Regulatory Agreement*” means this Regulatory Agreement, together with any amendments or supplements hereto.

“*Section 474A Penalty*” means the penalty described in Minnesota Statutes, Section 474A.047, subdivision 3, as applied to the Project.

“*Series 2019A Bonds*” means the Issuer’s Multifamily Housing Revenue Refunding Bonds (Amorce I Limited Partnership Project), Series 2019A, issued in the original aggregate principal amount of \$[8,540,000].

“*Series 2019A Loan Agreement*” means the Loan Agreement, dated as of August 1, 2019, between the Issuer and the Borrower, related to the Series 2019A Bonds.

“*Series 2019B Note*” means the Issuer’s Multifamily Housing Revenue Refunding Note (Amorce I Limited Partnership Project), Series 2019B, issued in the original aggregate principal amount of \$[5,250,000].

“*Series 2019B Loan Agreement*” means the Loan Agreement, dated as of August [\_\_\_], 2019, between the Issuer and the Borrower, related to the Series 2019B Note.

“*State*” means the State of Minnesota.

“*Treasury Regulations*” means the regulations promulgated or proposed by the Department of the Treasury pursuant to the Code from time to time or pursuant to any predecessor statute to the Code.

“*Trustee*” means U.S. Bank National Association, a national banking association, or any successor or assign.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement words of the masculine, feminine or neuter gender shall be construed to include each other gender when appropriate, and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Regulatory Agreement and all of the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

**Section 2. Representations by the Borrower.** The Borrower covenants, represents, and warrants that:

(a) The Borrower is a limited partnership organized and existing under the laws of the State. The Borrower is in good standing in the State and has duly authorized, by proper action, the execution and delivery of this Regulatory Agreement. The Borrower is duly authorized by the laws of the State to transact business in the State and to perform all of its duties hereunder.

(b) Neither the execution and delivery of this Regulatory Agreement or any other document in connection with the financing of the Project, the consummation of the transactions contemplated hereby and thereby nor the fulfillment of or compliance with the terms and conditions hereof and thereof conflicts with or results in a breach of any of the terms, conditions, or provisions of any agreement or instrument to which the Borrower is now a party or by which it is bound or constitutes a default (with due notice or the passage of time or both) under any of the foregoing or results in the creation or imposition of any prohibited

lien, charge, or encumbrance whatsoever upon any of the property or assets of the Borrower under the terms of any instrument or agreement to which the Borrower is now a party or by which it is bound.

(c) The execution, delivery, and performance of this Regulatory Agreement and all other documents to be delivered by the Borrower in connection with the consummation of the transactions contemplated hereby will not conflict with, or constitute a breach of or default under, any indenture, mortgage, deed of trust, lease, commitment, agreement, or other instrument or obligation to which the Borrower is a party or by which the Borrower or any of its property is bound, or under any law, rule, regulation, judgment, order, or decree to which the Borrower is subject or by which the Borrower or any of its property is bound.

(d) To the best of the Borrower's knowledge, there is no action, suit, proceeding, inquiry, or investigation by or before any governmental agency, public board, or body pending or threatened against the Borrower (nor to the best of its knowledge is there any basis therefor), which:

(i) affects or seeks to enjoin, prohibit, or restrain the issuance, sale, or delivery of the Bonds or the use of the proceeds of the Bonds to finance the acquisition, rehabilitation, and equipping of the Project or the execution and delivery of this Regulatory Agreement,

(ii) affects or questions the validity or enforceability of the Bonds or this Regulatory Agreement,

(iii) questions the tax-exempt status of the Bonds, or

(iv) questions the power or authority of the Borrower to own, acquire, rehabilitate, equip or operate the Project or to execute, deliver, or perform the Borrower's obligations under this Regulatory Agreement.

(e) The Project will be located wholly within the boundaries of the City.

(f) On and after the date on which the Bonds are executed and delivered to the Trustee, the Borrower will have title to the Project sufficient to carry out the purposes of this Regulatory Agreement, and such title shall be in and remain in the name of the Borrower except as otherwise permitted by this Regulatory Agreement.

(g) The Brooks Landing Project consists and will consist of those facilities described herein, which generally are described as a residential apartment building and related facilities situated on the Land. The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the exemption from federal income taxation of the interest on the Bonds. The Borrower will utilize and operate the Project as a multifamily rental housing project during the term of the Bonds in accordance with all applicable federal, State, and local laws, rules, and regulations applicable to the Project.

(h) The Borrower has obtained, or will obtain on or before the date required therefor, all necessary certificates, approvals, permits, and authorizations with respect to the operation of the Project.

(i) The Borrower does not and will not own any of the Bonds. The Borrower acknowledges and understands that during any period of time when the Borrower owns the Bonds, the interest on the Bonds shall not be tax-exempt pursuant to Section 147(a) of the Code.

(j) The Borrower does not own any buildings or structures which are proximate to the Project other than those buildings or structures which comprise the Project, which are being financed pursuant to a common plan under which the Project is also being financed.

(k) The statements made in the various certificates delivered by the Borrower to the Issuer or the Trustee on the date of issuance of the Bonds are true and correct.

**Section 3. Qualified Residential Rental Project.** The Borrower shall acquire, rehabilitate, equip, own, manage, and operate the Project as a “qualified residential rental project,” as such phrase is utilized in Section 142(d) of the Code, on a continuous basis during the Qualified Project Period. To that end, the Borrower hereby represents, warrants, and covenants as follows:

(a) that a qualified residential rental project will be rehabilitated on the Land, and the Borrower shall own, manage and operate the Project as a qualified residential rental project containing Dwelling Units and facilities Functionally Related and Subordinate to such Dwelling Units, in accordance with Section 142(a)(7) and Section 142(d) of the Code and all applicable Treasury Regulations promulgated thereunder, as the same may be amended from time to time;

(b) that all of the Dwelling Units of the Project will be similarly constructed and rehabilitated and each Dwelling Unit in the Project will contain complete facilities for living, sleeping, eating, cooking, and sanitation for a single person or a family;

(c) that:

(i) none of the Dwelling Units in the Project shall at any time in the future be utilized on a transient basis;

(ii) that none of the Dwelling Units in the Project shall at any time in the future be leased or rented for a period of less than 30 days; and

(iii) that neither the Project nor any portion thereof shall be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home, or trailer park or trailer court for use on a transient basis, or by a cooperative housing corporation (as defined in Section 216(b)(1) of the Code);

(d) that once available for occupancy:

(i) each Dwelling Unit in the Project must be rented or available for rental on a continuous basis to members of the general public during the Qualified Project Period; and

(ii) the Borrower shall not give preference in renting Dwelling Units in the Project to any particular class or group of persons, other than Low Income Tenants as provided herein or as otherwise permitted by law;

(e) that the Dwelling Units in the Project shall be leased and rented to members of the general public in compliance with this Regulatory Agreement, except for any Dwelling Unit for a resident manager or maintenance personnel;

(f) that the Project consists of one or more discrete edifices and other man-made construction, each consisting of an independent foundation, outer walls and roof, all of which will be (i) owned by the same person for federal tax purposes, (ii) located on a common tract of land or two or more parcels of land

which are contiguous except for being separated only by a road, street, stream, or a similar property and (iii) financed by the Loans or otherwise pursuant to a common plan of financing, and which consists entirely of:

- (i) units which are similar in quality and type of construction and amenities; and
- (ii) property Functionally Related and Subordinate in purpose and size to the Project, *e.g.*, parking areas, laundries, swimming pools, tennis courts, and other recreational facilities (none of which may be unavailable to any person because such person is a Low Income Tenant) and other facilities which are reasonably required for the Project, *e.g.*, heating and cooling equipment, trash disposal equipment, or units for residential managers or maintenance personnel;
- (g) that no portion of the Project shall be used to provide any health club facility, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;
- (h) that the Project shall not include a Dwelling Unit in a building where all Dwelling Units in such building are not also included in the Project;
- (i) that the Borrower shall not convert the Project to condominium or cooperative ownership;
- (j) that no Dwelling Unit in the Project shall be occupied by the Borrower (or any person related to the Borrower within the meaning of Section 147(a)(2) of the Code) at any time unless such person resides in a Dwelling Unit in a building or structure which contains at least five Dwelling Units and unless the resident of such Dwelling Unit is a resident manager or other necessary employee (*e.g.*, maintenance and security personnel);
- (k) that the Bonds will not be “federally guaranteed,” as defined in Section 149(b) of the Code;
- (l) that the Project shall at all times be used and operated as a “multifamily housing development,” as defined in the Act; and
- (m) that the Borrower shall not discriminate on the basis of race, creed, color, sex, sexual preference, source of income (*e.g.*, AFDC or SSI), physical disability, national origin, or marital status in the rental, lease, use, or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.

**Section 4. Low Income Tenants.** Pursuant to the requirements of the Act and Section 142(d) of the Code, the Borrower hereby represents, warrants, and covenants as follows:

- (a) Upon completion of the Project, at least 40% of the units in the Project will be occupied or held for occupancy by Low Income Tenants. Throughout the Qualified Project Period, not less than 40% of the completed units in the Project shall be continuously occupied or held for occupancy by Low Income Tenants. The Borrower will designate the Low Income Units and will make any revisions to such designations as necessary to comply with the applicable provisions of the Code and the Treasury Regulations. As set forth in paragraph (e) below, the Borrower shall advise the Issuer and the Trustee by delivery of a certificate in writing of the status of the occupancy of the Project with respect to Low Income Tenants on an annual basis for the term of this Regulatory Agreement. An Annual Certification of a Residential Rental Project, Form 8703 (Rev. September 2013), or successor form, shall be prepared annually by the Borrower and filed with the United States Secretary of the Treasury pursuant to Section 142(d)(7) of the Code (currently with the Internal Revenue Service Center, Ogden, Utah 84201), with a

copy to be filed by the Borrower with the Issuer and the Trustee. The percentage of units is measured by number of units, and not square footage of units.

For purposes of satisfying the occupancy requirements set forth above, a unit occupied by a person or family who at the commencement of their occupancy qualified as a Low Income Tenant shall be treated as occupied by a Low Income Tenant until such time as any re-certification of such tenant's income in accordance with Sections 4(c) and (h) below demonstrates that such tenant's income exceeds 140% of the income limitation applicable to Low Income Tenants.

A unit occupied by a Low Income Tenant shall be deemed, upon the termination of such tenant's occupancy, to be continuously occupied by a Low Income Tenant until reoccupied, other than for a temporary period (not to exceed 60 days), at which time the character of the unit shall be redetermined.

(b) The Borrower will notify the Issuer on an annual basis of any vacancy of any Low Income Units.

(c) The Borrower will obtain, complete, and maintain on file income certifications from each Low Income Tenant, obtained immediately prior to the initial occupancy of such tenant in the Project, and thereafter re-obtain in any year in which a unit in the Project is occupied by a new resident whose income exceeds the applicable income limit, income certifications (based upon their then current income), from each Low Income Tenant, substantially in the form of the income certification set forth in EXHIBIT B hereto or another form approved by Bond Counsel (the "Income Certification") and will provide such additional information as may be required by Section 142(d) of the Code, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures, Treasury Regulations now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service applicable to the Bonds. Such Income Certification shall be obtained prior to initial occupancy. If requested in writing by the Issuer, a copy of such Income Certification shall be filed with the Issuer prior to occupancy by the tenant whenever possible but in no event more than one month after initial occupancy by the tenant. A copy of each re-certification of income shall be attached to each report filed with the Issuer pursuant to Section 4(a) above. The Borrower shall make a good-faith effort to verify that the income reported by an applicant in an income certification is accurate by taking at least one of the following steps as a part of the verification process: (1) obtain a pay stub for the most recent pay period, (2) obtain an income tax return for the most recent tax year, (3) conduct a credit or similar search, (4) obtain an income verification form from the applicant's current employer, (5) obtain an income verification form from the Social Security Administration if the applicant receives assistance from such agency, or (6) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. If the Low Income Tenant is a Section 8 Certificate Holder, the Borrower shall retain a copy of the certificate or voucher for verification of income in lieu of an income verification.

The Borrower understands that failure to file the Annual Certification of a Residential Rental Project, Form 8703 (Rev. September 2013), or successor form, as required by Section 142(d)(7) of the Code at the times stated therein may subject it to the penalty described in Section 6652(j) of the Code.

(d) The Borrower will maintain complete and accurate records pertaining to the Low Income Units and will permit, upon reasonable prior notice, any duly authorized representative of the Issuer, the Trustee, the Department of the Treasury, or the Internal Revenue Service to inspect the books and records of the Borrower pertaining to the Project, including those records pertaining to the occupancy of the Low Income Units. This section is not intended to create any additional duties to inspect records.

(e) The Borrower will prepare and submit to the Issuer and the Trustee, on or before March 1 of each year during the Qualified Project Period, beginning the first March 1 following commencement of

the Qualified Project Period, a Continuing Program Compliance Certificate in the form of EXHIBIT C attached hereto and executed by the Borrower, and, if requested by the Issuer the Income Certifications described in Section 4(c) above. The Trustee may solely rely on the Continuing Program Compliance Certificate as evidence of compliance with this Section 4.

(f) The Borrower, upon becoming aware of an Event of Default, will notify the Issuer and the Trustee, in writing, of the occurrence of any such Event of Default hereunder or any event which, with the passage of time or service of notice, or both, would constitute an Event of Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto. Such notice shall be given promptly and in no event longer than 10 Business Days after the Borrower receives notice or gains knowledge of the occurrence of any such event. The Borrower further agrees that it will give prompt written notice to the Issuer and the Trustee if insurance proceeds or condemnation awards are received with respect to the Project and are not used to repair or replace the Project, which notice shall state the amount of such proceeds or award.

(i) Except as provided in (ii) below, the Borrower shall accept as tenants on the same basis as all other prospective tenants Low Income Tenants who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the Housing Act or its successor and shall not apply selection criteria to Section 8 certificate/voucher holders that are more burdensome than the criteria applied to all other prospective tenants.

(ii) The Borrower agrees to modify the leases for units in the Project as necessary to allow the rental of Low Income Units to Section 8 certificate/voucher holders.

(g) Each lease pertaining to a Low Income Unit shall contain a provision to the effect that the Borrower has relied on the income certification and supporting information supplied by the Low Income Tenant in determining qualification for occupancy of the Low Income Unit and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease.

(h) Throughout the Qualified Project Period, the Borrower shall recertify each Low Income Tenant's income on or before the anniversary of the Low Income Tenant's tenancy, in any year in which a unit in the Project is occupied by a new resident whose income exceeds the applicable income limit, by obtaining a completed Income Certification. In the event the re-certification demonstrates that any such tenant's household income exceeds 140% of the applicable income limit, the Borrower shall hold the next available unit or units of comparable or smaller size in the Project available for rental by new Low Income Tenants.

The Borrower in its sole discretion may notify, in writing, each tenant who is no longer a Low Income Tenant of such fact, and that the rent of such tenant(s) is subject to increase 30 days after receipt of such notice. The Borrower shall be entitled to so increase any such tenant's rent only if Borrower complies with any law applicable thereto and only after the Borrower has rented the next available unit or units in the Project on a one-for-one basis to a Low Income Tenant, or holds units vacant and available for occupancy by Low Income Tenants.

The Borrower agrees to inform all prospective Low Income Tenants of the requirements for re-certification of income and of the provisions of the preceding paragraph.

**Section 5. Restrictions Imposed by Minnesota Statutes Chapter 474A.** Because the Bonds are issued by the Issuer as residential rental project bonds, as defined in Minnesota Statutes, Chapter 474A, as amended ("Chapter 474A"), and the Issuer has received an allocation of tax-exempt bonding authority

pursuant to applicable provisions of Chapter 474A, the restrictions imposed by Chapter 474A apply to the Project as described below.

(a) In addition to any other restrictions on rent or the income of tenants set forth in this Regulatory Agreement, during the Qualified Project Period, the Borrower shall restrict rents on at least 20% of the units in the Project (which may consist of the same units as meet the requirements of Section 4) to an amount not exceeding the area fair market rents or exception fair market rents, as applicable, for existing housing as established by the federal Department of Housing and Urban Development from time to time, which units shall be occupied, or held for occupancy, by Low Income Tenants. The rental rates of units in a residential rental project for which rental assistance payments are made are deemed to be within the rent limitations of this clause if the amount paid by the tenants is less than the fair market rents.

(b) The annual certifications required to be made by the Borrower hereunder shall conform to the requirements of Section 474A.047, subdivision 2, and the Issuer shall have the authority to impose upon the Borrower any and all penalties described in Section 474A.047, subdivision 3, from time to time, in addition to any remedies otherwise available under this Regulatory Agreement.

(c) The Borrower must satisfy the requirements of Section 474A.047, subdivision 1(a), during the Qualified Project Period. The Borrower must annually certify to the Issuer over the term of this Regulatory Agreement that the rental rates for the rent-restricted units are within the limitations under Section 474A.047, subdivision 1(a), of Chapter 474A. The Issuer may request individual certification of the income of residents of the income-restricted units. The Commissioner of Minnesota Management and Budget may request from the Issuer a copy of the annual certification prepared by the Borrower. The Commissioner of Minnesota Management and Budget may require the Issuer to request individual certification of all residents of the income-restricted units. Notwithstanding anything to the contrary contained in this Section 5, the rental rates of all units in the Project for which project-based federal assistance payments will be made under a Section 8 Housing Assistance Payment Contract, are deemed to be within the rent limitations of Section 474A.047, subdivision 1(a) of Chapter 474A.

**Section 6. Covenants Run with the Land.** The Borrower hereby declares its express intent that the covenants, restrictions, charges, and easements set forth herein shall be deemed covenants running with the Land and shall, except as otherwise provided in this Regulatory Agreement, pass to and be binding upon the Borrower's successors in title including any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors, and assigns of any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein. Except as otherwise provided in this Regulatory Agreement, each and every contract, deed, or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants, restrictions, charges, and easements contained herein; provided, however, that any such contract, deed, or other instrument shall conclusively be held to have been executed, delivered, and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed, or other instrument.

**Section 7. Indemnification.** The Borrower hereby covenants and agrees that it shall indemnify and hold harmless the Issuer and the Trustee and their officers, agents, officials, directors, representatives and employees (the "Indemnified Parties") as provided in the Loan Agreements. All provisions of the Loan Agreements relating to indemnification are incorporated by reference herein and are considered provisions of this Regulatory Agreement, as if expressly set out herein.

**Section 8. Consideration.** The Issuer has issued the Bonds in part to provide funds to make the Loans to finance the acquisition, rehabilitation, and equipping of the Project all for the purpose, among others, of inducing the Borrower to acquire, rehabilitate, equip, and operate the Project. In consideration of the issuance of the Bonds by the Issuer, the Borrower has entered into this Regulatory Agreement and has agreed to restrict the uses to which the Project can be put on the terms and conditions set forth herein.

**Section 9. Reliance.** The Issuer and the Borrower hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all persons interested in the legality and validity of the Bonds and in the exemption from federal income taxation of the interest on the Bonds. In performing their duties and obligations hereunder and under the Indenture, the Issuer and the Trustee may rely upon statements and certificates of the Borrower and the tenants and upon audits of the books and records of the Borrower pertaining to the Project. In addition, the Issuer and the Trustee may consult with counsel, and the written opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Issuer or the Trustee hereunder in good faith and in conformity with such written opinion. A copy of any such opinion shall be furnished by the Issuer or the Trustee to the Borrower upon written request. In determining whether any default or lack of compliance by the Borrower exists under this Regulatory Agreement, the Issuer or the Trustee shall not be required to conduct any investigation into or review of the operations or records of the Borrower and may rely solely on any notice or certificate delivered to the Issuer or the Trustee by the Borrower with respect to the occurrence or absence of a default unless it knows, or in the exercise of reasonable care should have known, that the notice or certificate is erroneous or misleading.

The Trustee and the Issuer shall be under no duty to make any investigation or inquiry as to any statements or other matters contained or referred to in any documents or any instruments delivered to it in accordance with this Regulatory Agreement, but it may receive and accept the same as conclusive evidence of the truth and accuracy of such statements.

**Section 10. Sale or Transfer of the Project.** The Borrower hereby covenants and agrees not to sell, transfer, or otherwise dispose of the Project, or any portion thereof, except as permitted under the terms of the Loan Agreements. Any attempted sale, transfer, or disposition which would cause or result in the violation of any of these covenants, provisions, reservations, restrictions, charges, or easements shall be null and void ab initio and of no force and effect. Nothing herein shall prohibit the transfer, sale or assignment of the interests in the Borrower or any direct or indirect ownership interests in the Borrower's partners.

**Section 11. Term.** This Regulatory Agreement and the terms hereof shall become effective upon its execution and delivery and shall remain in full force and effect for a term and period equal to the Qualified Project Period, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Bonds and termination of the Loan Agreements and the Loans if the Qualified Project Period has not expired at the time of such retirement and expiration. Notwithstanding anything in this Regulatory Agreement to the contrary:

(a) The Project may be transferred pursuant to a foreclosure, exercise of power of sale, or deed in lieu of foreclosure, or comparable proceedings without the consent of or fee of any kind payable to the Issuer or compliance with the provisions of this Regulatory Agreement. In connection with any such foreclosure, deed in lieu of foreclosure, or other proceedings, this Regulatory Agreement shall be terminated upon completion of the foreclosure and expiration of the applicable redemption period, or recording of a deed in lieu of foreclosure.

(b) The requirements of this Regulatory Agreement shall terminate and be of no further force and effect in the event of involuntary noncompliance with the provisions of this Regulatory Agreement

caused by fire or other casualty, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law, or an action of a federal agency after the date of this Regulatory Agreement, which prevents the Issuer and the Trustee from enforcing such provisions, or condemnation or a similar event, but only if, within a reasonable period, either the Bonds are retired or amounts received as a consequence of such event are used to provide a project that meets the requirements hereof (provided that this shall be deemed met if the Bonds have been previously retired); provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure, or the delivery of a deed in lieu of foreclosure, or a similar event, the Borrower or any related person (within the meaning of Section 1.103-10(e) of the Treasury Regulations) obtains an ownership interest in the Project for federal income tax purposes. The Borrower hereby agrees that, following any foreclosure, transfer of title by deed in lieu of foreclosure, or similar event, neither the Borrower nor any such related person as described above will obtain an ownership interest in the Project for federal tax purposes.

(c) This Regulatory Agreement, or any of the provisions or sections hereof, may be terminated upon agreement by the Issuer and the Borrower, upon receipt of an opinion of Bond Counsel to the effect that such termination will not cause interest on the Bonds to become included in gross income for federal income tax purposes or cause interest on the Bonds to become included in the net taxable income of individuals, trusts, and estates for State income tax purposes.

Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver, and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms.

**Section 12. Burden and Benefit.** The Issuer and the Borrower hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the Land in that the Borrower's legal interest in the Project is rendered less valuable thereby. The Issuer and the Borrower hereby further declare their understanding and intent that the benefit of such covenants touch and concern the Land by enhancing and increasing the enjoyment and use of the Project by Low Income Tenants, the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes for which the Bonds were issued. Notwithstanding the foregoing, the Low Income Tenants are not intended to be third-party beneficiaries of this Regulatory Agreement and shall have no rights to enforce any provision herein.

**Section 13. Enforcement.** If the Borrower defaults in the performance or observance of any covenant, agreement, or obligation of the Borrower set forth in this Regulatory Agreement, and if such default remains uncured for a period of 60 days after written notice thereof shall have been given by the Issuer or the Trustee to the Borrower, then the Issuer, or the Trustee, acting upon the direction of the holders of the Series 2019A Bonds pursuant to the Indenture, may declare an "Event of Default" to have occurred hereunder and, at its option, may take any one or more of the following steps:

(a) by mandamus or other suit, action, or proceeding at law or in equity require the Borrower to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer, the Trustee, or the holders of the Bonds hereunder;

(b) have access to and inspect, examine, and make copies of all the books and records of the Borrower pertaining to the Project;

(c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants, and agreements of the Borrower hereunder; or

(d) with the Trustee's consent, declare a default under the Loans, accelerate the indebtedness evidenced by the Loans, and proceed to redeem the Bonds in accordance with their terms.

Notwithstanding anything to the contrary contained herein, the Issuer and the Trustee hereby agree that any cure of any default made or tendered by one or more of Borrower's partners shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

All fees, costs, and expenses of the Trustee or the Issuer incurred in taking any action pursuant to this Section 13 shall be the sole responsibility of the Borrower and shall be paid to the Trustee or the Issuer, as the case may be, on demand.

After the Bonds have been discharged, the Issuer may act on its own behalf to declare an "Event of Default" to have occurred and to take any one or more of the steps specified hereinabove to the same extent and with the same effect as if taken by the Trustee at the direction of the holders of the Bonds.

**Section 14. The Trustee and the Issuer.** The Trustee is entering into this Regulatory Agreement in its capacity as the Trustee under the terms of the Bonds and the Indenture. The Issuer may, at all times, assume the Borrower's compliance with this Regulatory Agreement unless otherwise notified in writing by the Trustee (but the Trustee shall have no obligation to so notify the Issuer), or unless the Issuer has actual knowledge of noncompliance. The Trustee can rely on the accuracy of any certificates, instruments, opinions, or reports delivered to it by the Borrower. It is expected that the Bonds will be discharged and the Indenture will terminate prior to the expiration of the Qualified Project Period. Following the payment in full and the discharge of the Bonds and the termination of the Indenture: (i) all obligations, rights, and duties of the Trustee under this Regulatory Agreement will terminate and be of no further force and effect; (ii) all actions required by the Trustee will instead be undertaken by the Issuer; (iii) all notices to be delivered to the Trustee will instead be delivered to the Issuer and all notices to be delivered by the Trustee will instead be delivered by the Issuer; and (iv) the Trustee shall no longer be a party to this Regulatory Agreement and shall be considered released from all obligations hereunder.

**Section 15. Amendment.** The provisions hereof shall not be amended or revised prior to the stated term hereof except by an instrument in writing duly executed by the Issuer and the Borrower, and consented to by the Trustee as may be required by the Loan Agreements, and duly recorded. The Issuer's and the Trustee's consent to any such amendment or revision (whether or not the Bonds shall then be outstanding) shall be given only upon receipt of an opinion of Bond Counsel addressed to the Issuer and Trustee that such amendment or revision will not adversely affect the exemption from federal income taxation of interest on the Bonds. Neither the Issuer nor the Trustee shall have a duty to prepare any such consent, amendment, or revision.

**Section 16. Right of Access to the Project and Records.** The Borrower agrees that during the term of this Regulatory Agreement, the Issuer, the Trustee, and the duly authorized agents of either of them shall have the right at all reasonable times, and upon reasonable notice of at least 24 hours, to enter upon the site of the Project during normal business hours to examine and inspect the Project and to have access to the books and records of the Borrower with respect to the Project, a copy of which shall be maintained at the site of the Project.

**Section 17. No Conflict with Other Documents.** The Borrower warrants that it has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof.

**Section 18. Severability.** The invalidity of any clause, part, or provision of this Regulatory Agreement shall not affect the validity of the remaining portions thereof.

**Section 19. Notices.** All notices to be given pursuant to this Regulatory Agreement shall be in writing and shall be deemed given when sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods or when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing:

To the Issuer:	City of Brooklyn Park, Minnesota 5200 85th Avenue North Brooklyn Park, Minnesota 55443 Attention: LaTonia Green, Finance Director
To the Trustee:	U.S. Bank National Association Corporate Trust Services 60 Livingston Avenue, 3rd Floor EP-MN-WS3C Saint Paul, Minnesota 55107-2292 Attn: Dan Sheff
To the Borrower:	Amorce I Limited Partnership c/o Boisclair Corporation 3033 Excelsior Blvd, Suite 215 Minneapolis, Minnesota 55416 Attention: Lori Boisclair, President
With a copy to:	Winthrop & Weinstine, P.A. Capella Tower, Suite 3500 225 South Sixth Street Minneapolis, MN 55402-4629 Attn: Todd B. Urness, Esq. and Erin E. Mathern, Esq.
To Investor Limited Partner:	WNC Holding, LLC c/o WNC & Associates, Inc. 37 West Bridge Street, Suite 203 Dublin, OH 43017 Attn: Michael Simmerman
With a copy to:	Barnes & Thornburg LLP 41 South High Street, Suite 3300 Columbus, OH 43215-6104 Attention: Phillip R. Westerman, Esq.

**Section 20. Governing Law.** This Regulatory Agreement shall be governed by and construed in accordance with the laws and judicial decisions of the State, except as such laws may be preempted by any federal rules, regulations, and laws.

**Section 21. Payment of Fees.** Notwithstanding payment of the Loan, the termination of the Loan Agreements, and the defeasance or discharge of the Bonds, throughout the term of the Qualified Project Period, the Borrower shall continue to pay:

(a) to the Issuer, reimbursement for all reasonable fees and expenses, including, but not limited to, financial advisory and legal fees and expenses necessary for the Issuer's reviewing and, if necessary, enforcing compliance by the Borrower with the terms of this Regulatory Agreement; and

(b) the fees and expenses of any entity or person designated by the Issuer to perform the review of the Borrower's compliance with this Regulatory Agreement; provided that such fees and expenses are not duplicative of any fees and expenses paid under (a) above.

**Section 22. Limited Liability** All obligations of the Issuer hereunder shall be special, limited obligations of the Issuer, payable solely and only from proceeds of the Bonds and amounts derived by the Issuer from the Loans and the Loan Agreements.

**Section 23. Actions of Issuer.** The Issuer shall be entitled to rely conclusively on an opinion of counsel in the exercise or non-exercise of any of the rights or powers vested in the Issuer by virtue of this Regulatory Agreement or any other agreement or instrument executed in connection with the issuance of the Bonds; it being the intent of the parties hereto that the Issuer, and any and all present and future trustees, members, commissioners, officers, employees, attorneys, and agents of the Issuer shall not incur any financial or pecuniary liability for the exercise or non-exercise of any rights or powers vested in the Issuer by this Regulatory Agreement or any other instrument or agreement executed in connection with the issuance of the Bonds; or for the performance or nonperformance of any obligation under, or the failure to assert any right, power, or privilege under this Regulatory Agreement, the Bonds, the Loan Agreements, the Indenture or any other instrument or agreement executed in connection with the issuance of the Bonds. If the Issuer's consent or approval is required under this Regulatory Agreement, or any other agreement or instrument executed in connection with the issuance of the Bonds, the Issuer shall be entitled to rely conclusively on an opinion of counsel and shall not be responsible for any loss or damage resulting from any action or inaction in reliance upon such opinion.

**Section 24. Counterparts.** This Regulatory Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Regulatory Agreement, and, in making proof of this Regulatory Agreement, it shall not be necessary to produce or account for more than one such counterpart.

**Section 25. Recording and Filing.** The Borrower shall cause this Regulatory Agreement and all amendments and supplements hereto and thereto to be recorded and filed in the real property records of the County, the State, and in such other places as the Issuer may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording.

**Section 26. HUD Rider to Regulatory Agreement.** The HUD Rider to Restrictive Covenants (the "HUD Rider") attached to this Regulatory Agreement is hereby made a part of this Regulatory Agreement. In the event of a conflict between the provisions of the HUD Rider and the provisions of this Regulatory Agreement, the provisions of the HUD Rider shall control.

**Section 27. Additional Approvals.** Subsequent to issuance of the Bonds, the officers of Issuer are hereby authorized and directed to execute and provide all certified copies, certificates, affidavits, disclosures, representations, and reporting forms as may be required with respect to the continuing obligations of the parties hereunder.

(The remainder of this page is intentionally left blank.)



**IN WITNESS WHEREOF**, the parties have caused this Regulatory Agreement to be signed by their respective duly authorized representatives as of the day and year first written above.

**CITY OF BROOKLYN PARK, MINNESOTA**

By \_\_\_\_\_  
Its: Mayor

By \_\_\_\_\_  
Its: City Manager

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Jeffrey Lunde, the Mayor of the City of Brooklyn Park, Minnesota, on behalf of the City.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Jay Stroebel, the City Manager of the City of Brooklyn Park, Minnesota, on behalf of the City.

\_\_\_\_\_  
Notary Public



**U.S. BANK NATIONAL ASSOCIATION**

By \_\_\_\_\_  
Its Vice President

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF RAMSEY     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019,  
by \_\_\_\_\_, the Vice President of U.S. Bank National Association, a national banking  
association, on behalf of the national banking association.

\_\_\_\_\_  
Notary Public

[Signature page to Regulatory Agreement]

**EXHIBIT A**

**Legal Description of the Land  
(Brooks Landing)**

The Land described in this Regulatory Agreement is located in Hennepin County, Minnesota, and is legally described as follows:

**Parcel 1:**

Starting at a point 333 feet East of the Northwest corner of the South 686.6 feet of the Southeast 1/4 of the Northwest 1/4 of Section 28, Township 119, Range 21; thence proceeding East 200 feet along said North line of the South 686.6 feet of the Southeast 1/4 of the Northwest 1/4 of Section 28, Township 119, Range 21; thence proceeding South along a line parallel with the West line of the Southeast 1/4 of the Northwest 1/4 of Section 28, Township 119, Range 21 a distance of 64.75 feet; thence proceeding East a distance of 100 feet along a line parallel to the South line of the Southeast 1/4 of the Northwest 1/4 of Section 28, Township 119, Range 21; thence proceeding North parallel to the West line of the Southeast 1/4 of the Northwest 1/4 of Section 28, Township 119, Range 21 to its intersection with the South line of Twin Brook Center; also being the South line of 74th Avenue North as dedicated in said plat of Twin Brook Center; thence proceeding West along said South line of Twin Brook Center to its intersection with a line extending North parallel with the West line of the Southeast 1/4 of the Northwest 1/4 of Section 28, Township 119, Range 21; thence South along said intersecting line to the point of beginning.

**Parcel 2:**

Starting at a point 333 feet East of the Northwest corner of the South 686.6 feet of the Southeast 1/4 of the Northwest 1/4 of Section 28, Township 119, Range 21; thence proceeding East 200 feet along said North line of the South 686.6 feet of the Southeast 1/4 of the Northwest 1/4 of Section 28, Township 119, Range 21; thence proceeding South along a line parallel with the West line of the Southeast 1/4 of the Northwest 1/4 of Section 28, Township 119, Range 21, a distance of 64.75 feet; thence proceeding East a distance of 100 feet along a line parallel to the South line of the Southeast 1/4 of the Northwest 1/4 of Section 28, Township 119, Range 21 to the point of beginning; thence proceeding North parallel to the West line of the Southeast 1/4 of the Northwest 1/4 of Section 28, Township 119, Range 21 to its intersection with the South line of Twin Brook Center; also being the South line of 74th Avenue North as dedicated in said plat of Twin Brook Center; thence proceeding East along said South line of Twin Brook Center, a distance of 49 feet; thence South a distance of 269.64 feet parallel with said West line of the Southeast 1/4 of the Northwest 1/4; thence West parallel to the South line thereof to the point of beginning.

**EXHIBIT B**

**Form of Income Certification**

TENANT INCOME CERTIFICATION  <input type="checkbox"/> Initial Certification <input type="checkbox"/> Recertification <input type="checkbox"/> Other _____	Effective Date: _____ Move-in Date: _____ (MM/DD/YY): _____
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**PART I. DEVELOPMENT DATA**

Property Name: Brooks Landing Apartments Address: 5825 74th Avenue North, Brooklyn Park, Minnesota	County: Hennepin Unit Number: _____	BIN #: _____ # Bedrooms: _____
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**PART II. HOUSEHOLD COMPOSITION**

HH Br #	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YY)	F/T Student (Y or N)	Social Security or Alien Reg. No.
1			HEAD			
2						
3						
4						
5						
6						

**PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)**

HH Br #	(A) Employment or Wages	(B) Soc. Security / Pensions	(C) Public Assistance	(D) Other Income
<b>TOTAL</b>	\$	\$	\$	\$
Add totals from (A) through (D) above			<b>TOTAL INCOME (E):</b>	\$

<b>PART IV. INCOME FROM ASSETS</b>				
HH Mbr#	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
<b>TOTALS:</b>			\$	\$
Enter Column (H) Total if over \$5,000 \$ _____		Passbook Rate x 2.00 %		= (J) Imputed Income
				\$
Enter the greater of the total column I, or J: imputed income				<b>TOTAL INCOME FROM ASSETS (K)</b>
				\$
<b>(L) Total Annual Household Income from all sources [Add (E) + (K)]</b>				\$

**HOUSEHOLD CERTIFICATION & SIGNATURES**

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full-time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

Signature	(Date)	Signature	(Date)
Signature	(Date)	Signature	(Date)

**PART V. DETERMINATION OF INCOME ELIGIBILITY**

TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES From Item (L) on page 1	\$ <span style="border: 1px solid black; display: inline-block; width: 100px; height: 20px; vertical-align: middle;"></span>	Household Meets Income Restriction at: <input type="checkbox"/> 60% <input type="checkbox"/> 50% <input type="checkbox"/> 40% <input type="checkbox"/> 30% <input type="checkbox"/> ___%	RECERTIFICATION ONLY: Current Income Limit x 140% \$ _____ Household income exceeds 140% at recertification: <input type="checkbox"/> Yes <input type="checkbox"/> No Household Size at Move-in: _____
Current Income Limit per Family Size:	\$ _____		
Household Income at Move-in	\$ _____		



**INSTRUCTIONS FOR COMPLETING  
TENANT INCOME CERTIFICATION**

*This form is to be completed by the owner or an authorized representative.*

**Part I – Development Data**

Check the appropriate box for Initial Certification (move-in), Recertification (annual recertification), or Other. If Other, designate the purpose of the recertification (i.e., a unit transfer, a change in household composition, or other state-required recertification).

- Move-in Date            Enter the date the tenant has or will take occupancy of the unit.
- Effective Date        Enter the effective date of the certification. For move-in, this should be the move-in date. For annual recertification, this effective date should be no later than one year from the effective date of the previous (re)certification.
- Property Name        Enter the name of the development.
- County                Enter the county (or equivalent) in which the building is located.
- BIN #                 Enter the Building Identification Number (BIN) assigned to the building (from IRS Form 8609).
- Address                Enter the unit number.
- Unit Number         Enter the unit number.
- # Bedrooms            Enter the number of bedrooms in the unit.

**Part II – Household Composition**

List all occupants of the unit. State each household member’s relationship to the head of the household by using one of the following coded definitions:

- |   |                   |   |                     |
|---|-------------------|---|---------------------|
| H | Head of household | S | Spouse              |
| A | Adult co-tenant   | O | Other family member |
| C | Child             | F | Foster child        |
| L | Live-in caretaker | N | None of the above   |

Enter the date of birth, student status, and Social Security number or alien registration number for each occupant.

*If there are more than seven occupants, use an additional sheet of paper to list the remaining household members and attach it to the certification.*

**Part III – Annual Income**

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income, including acceptable forms of verification.

From the third party verification forms obtained from each income source, enter the gross amount anticipated to be received for the 12 months from the effective date of the (re)certification. Complete a separate line for each income-earning member. List the respective household member number from Part II.

- Column (A) Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment; distributed profits and/or net income from a business.
- Column (B) Enter the annual amount of Social Security, Supplemental Security Income, pensions, military retirement, etc.
- Column (C) Enter the annual amount of income received from public assistance (i.e., TANF, general assistance, disability, etc.)
- Column (D) Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household.
- Row (E) Add the totals from columns (A) through (D) above. Enter this amount.

**Part IV – Income from Assets**

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income from assets, including acceptable forms of verification.

From the third party verification forms obtained from each asset source, list the gross amount anticipated to be received during the 12 months from the effective date of the certification. List the respective household member number from Part II and complete a separate line for each member.

- Column (F) List the type of asset (i.e., checking account, savings account, etc.)
- Column (G) Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification).
- Column (H) Enter the cash value of the respective asset.
- Column (I) Enter the anticipated annual income from the asset (i.e., savings account balance multiplied by the annual interest rate).
- TOTALS Add the total of Column (H) and Column (I), respectively.

If the total in Column (H) is greater than \$5,000, you must do an imputed calculation of asset income. Enter the Total Cash Value, multiply by 2% and enter the amount in (J), Imputed Income.

- Row (K) Enter the Greater of the total in Column (I) or (J)
- Row (L) Total Annual Household Income from All Sources Add (E) and (K) and enter the total

**HOUSEHOLD CERTIFICATION AND SIGNATURES**

After all verifications of income and/or assets have been received and calculated, each household member age 18 or older must sign and date the Tenant Income Certification. For move-in, it is recommended that the Tenant Income Certification be signed no earlier than five days prior to the effective date of the certification.

**Part V – Determination of Income Eligibility**

Total Annual Household Income from all sources	Enter the number from item (L).
Current Income Limit per Family Size	Enter the Current Move-in Income Limit for the household size.
Household income at move-in Household size at move-in	For recertifications only. Enter the household income from the move-in certification. On the adjacent line, enter the number of household members from the move-in certification.
Household Meets Income Restriction	Check the appropriate box for the income restriction that the household meets according to what is required by the set-aside(s) for the project.
Current Income Limit x 140%	For recertification only. Multiply the Current Maximum Move-in Income Limit by 140% and enter the total. Below, indicate whether the household income exceeds that total. If the Gross Annual Income at recertification is greater than 140% of the current income limit, then the available unit rule must be followed.

**Part VI – Rent**

Tenant Paid Rent	Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).
Rent Assistance	Enter the amount of rent assistance, if any.
Utility Allowance	Enter the utility allowance. If the owner pays all utilities, enter zero.
Other non-optional charges	Enter the amount of non-optional charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.
Gross Rent for Unit	Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges.
Maximum Rent Limit for this unit	Enter the maximum allowable gross rent for the unit.
Unit Meets Rent Restriction at ___%	Check the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the project.

**Part VII – Student Status**

If all household members are full-time\* students, check “yes.” If at least one household member is not a full-time student, check “no.”

If “yes” is checked, the appropriate exemption must be listed in the box to the right. If none of the exemptions apply, the household is ineligible to rent the unit.

\* *Full time is determined by the school the student attends.*

**Part VIII – Program Type**

Mark the program(s) for which this unit will be counted toward the property’s occupancy requirements. Under each program marked, indicate the household’s income status as established by this certification/recertification. If the property does not participate in the HOME, Tax-Exempt Bond, Affordable Housing Disposition, or other housing program, leave those sections blank.

- Tax Credit                      See Part V above.
  
- HOME                              If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set-asides, mark the appropriate box indicating the household’s designation.
  
- Tax Exempt                      If the property participates in the Tax Exempt Bond program, mark the appropriate box indicating the household’s designation.
  
- AHDP                              If the property participates in the Affordable Housing Disposition Program (AHDP), and this household’s unit will count towards the set-aside requirements, mark the appropriate box indicating the household’s designation.
  
- Other                              If the property participates in any other affordable housing program, complete the information as appropriate.

**SIGNATURE OF OWNER / REPRESENTATIVE**

It is the responsibility of the owner or the owner’s representative to sign and date this document immediately following execution by the resident(s).

The responsibility of documenting and determining eligibility (including completing and signing the Tenant Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well-trained in tax credit compliance.

*These instructions should not be considered a complete guide on tax credit compliance. The responsibility for compliance with federal program regulations lies with the owner of the building(s) for which the credit is allowable.*

**EXHIBIT C**

**Certificate of Continuing Program Compliance**

\_\_\_\_\_, 20\_\_

TO: City of Brooklyn Park, Minnesota  
5200 85th Avenue North  
Brooklyn Park, Minnesota 55443  
Attention: Latonia Green, City Finance Director

and (prior to the discharge of the Bonds (hereinafter defined))

U.S. Bank National Association  
60 Livingston Avenue  
EP-MN-WS3C  
St. Paul, Minnesota 55107-2292  
Attn: Corporate Trust Services

Re: Multifamily Housing Revenue Refunding Bonds (Amorce I Limited Partnership Project), Series 2019A (the "Series 2019A Bonds") and Multifamily Housing Revenue Refunding Note, Series 2019B (the "Series 2019B Note" and, together with the Series 2019A Bonds, the "Bonds")

The undersigned, an authorized representative for Amorce I Limited Partnership, a Minnesota limited partnership (the "Owner"), hereby certifies, represents, and warrants that:

1. The Owner owns the multifamily housing project located in the City of Brooklyn Park, Hennepin County, Minnesota and known as Brooks Landing Apartments (the "Project").

2. The undersigned and the Owner have read and are thoroughly familiar with the provisions of (1) the Regulatory Agreement, dated as of August 1, 2019 (the "Regulatory Agreement"), between the Owner, the City of Brooklyn Park, Minnesota (the "Issuer"), and U.S. Bank National Association (the "Trustee"); (2) the Loan Agreement, dated as of August 1, 2019 (the "Series 2019A Loan Agreement"), between the Owner and the Issuer with respect to the Series 2019A Bonds; and (3) the Loan Agreement, dated as of August [\_\_\_], 2019 (the "Series 2019B Loan Agreement" and, together with the Series 2019A Loan Agreement, the "Loan Agreements"), between the Owner and the Issuer with respect to the Series 2019B Note. The Regulatory Agreement was executed, delivered, and recorded against the Project in connection with the issuance of the Bonds.

3. A review of the activities of the Owner and of the Owner's performance under the Regulatory Agreement and the Loan Agreements during the year ending \_\_\_\_ has been made under the supervision of the undersigned.

4. The Project's Qualified Project Period commenced on \_\_\_\_\_, \_\_\_\_ (the date on which 10% of the residential units in the Project were occupied), and will end on the latest of:

(i) \_\_\_\_\_, \_\_\_\_ (the date which is 15 years after the date on which 50% of the residential units in the Project were occupied);

(ii) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding, or

(iii) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates.

5. As of the date of this Certificate, the following percentages of completed residential units in the Project are (i) occupied by Low Income Tenants or (ii) currently vacant and being held available for occupancy by Low Income Tenants and have been so held continuously since the date a Low Income Tenant vacated such unit, as indicated:

Occupied by Low Income Tenants	_____ % Units	Nos. _____
Continuously held vacant for occupancy by Low Income Tenants since last occupied by Low Income Tenants	_____ % Units	Nos. _____

6. At no time since the date of filing of the last Continuing Program Compliance Certificate (or since the issuance of the Bonds, if this is the first such certificate) has less than \_\_\_\_\_ units representing 40% of the completed units in the Project been occupied by or were last occupied by Low Income Tenants.

7. As of the date of this Certificate, at least 40% of the units in the Project are (i) occupied by persons or families with Adjusted Income which does not exceed 60% of the Median Income for the Area adjusted for household size; or (ii) held vacant for occupancy for persons or families with Adjusted Income which does not exceed 60% of the Median Income for the Area adjusted for household size. Project Units occupied or held vacant for persons or families with Adjusted Income which does not exceed 60% of the Median Income for the Area adjusted for household size include Unit numbers \_\_\_\_\_.

8. At all times since the date of filing of the last Continuing Program Compliance Certificate the rent on at least 20% of the units in the Project has been equal to or less than applicable area fair market rents or exception fair market rents for existing housing as established from time to time by the United States Department of Housing and Urban Development. The rental rates of all units in the Project for which project-based federal assistance payments will be made under a Section 8 Housing Assistance Payment Contract are deemed to be within the rent limitations of Section 474.047A, subdivision 1(a) of Chapter 474.

9. To the knowledge of the undersigned, after due inquiry, all units were rented or available for rental on a continuous basis during the immediately preceding year to members of the general public, and the Owner is not now and has not been in default under the terms of the Regulatory Agreement and the Loan Agreements and, to the knowledge of the undersigned, no Determination of Taxability has occurred with respect to the Bonds.

10. [CHOOSE ONE: None/One or more] of the Tenants in the Project are currently receiving assistance under Section 8 of the United States Housing Act of 1937.

11. Unless otherwise expressly provided herein or unless the context requires otherwise, the capitalized terms used but not defined herein shall have the meaning assigned to such terms in the Regulatory Agreement.

12. The Owner has not transferred any interest in the Project since the date of submission of the Continuing Program Compliance Certificate last submitted to the Trustee and the Issuer with respect to the Project. **(If the Owner has transferred any interest in the Project, such transfer should be detailed here.)**

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Dated: \_\_\_\_\_, 20\_\_.

**AMORCE I LIMITED PARTNERSHIP,**  
a Minnesota limited partnership

By: Amorce I GP LLC,  
a Minnesota limited liability company  
Its: General Partner

By: \_\_\_\_\_

Its: \_\_\_\_\_

## HUD RIDER TO RESTRICTIVE COVENANTS

This RIDER TO RESTRICTIVE COVENANTS (“Rider”) is made as of August 1, 2019, by AMORCE I LIMITED PARTNERSHIP, a Minnesota limited partnership (“Borrower”), U.S. BANK NATIONAL ASSOCIATION, a national banking association (the “Trustee”) and the CITY OF BROOKLYN PARK, MINNESOTA, a home rule charter city, municipal corporation and political subdivision of the State of Minnesota (the “Issuer”).

WHEREAS, Borrower has obtained financing from Dougherty Mortgage LLC, a Delaware limited liability company (“FHA Lender”) for the benefit of the project known as Brooks Landing Apartments (the “Project”), which loan is secured by a Multifamily Mortgage, Assignment of Leases and Rents, and Security Agreement (Minnesota), dated as of August 1, 2019 (“Security Instrument”), filed in the office of the County Recorder and Registrar of Titles of Hennepin County simultaneously herewith and is insured by the United States Department of Housing and Urban Development (“HUD”);

WHEREAS, Borrower has received tax-exempt bond financing from the Issuer, which Issuer is requiring certain restrictions be recorded against the Project; and

WHEREAS, HUD requires as a condition of its insuring FHA Lender’s financing to the Project, that the lien and covenants of the Regulatory Agreement to which this Rider is attached (“Restrictive Covenants”) be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

WHEREAS, the Issuer and the Trustee have agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan in accordance with the terms of this Rider.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Rider, the provision contained in this Rider shall govern and be controlling in all respects as set forth more fully herein.

(b) The following terms shall have the following definitions:

“Code” means the Internal Revenue Code of 1986, as amended.

“FHA Lender” means Dougherty Mortgage LLC, a Delaware limited liability company, its successors and assigns.

“Mortgage Loan” means the mortgage loan made by FHA Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

“Mortgage Loan Documents” means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or FHA Lender in connection with the Mortgage Loan.

“Security Instrument” means the mortgage or deed of trust from Borrower in favor of FHA Lender, as the same may be supplemented, amended or modified.

“HUD” means the United States Department of Housing and Urban Development.

“HUD Regulatory Agreement” means the Regulatory Agreement for Multifamily Projects between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

“National Housing Act” means the National Housing Act of 1934, as amended.

“Program Obligations” has the meaning set forth in the Security Instrument.

“Residual Receipts” has the meaning specified in the Program Obligations.

“Surplus Cash” has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in the Restrictive Covenants to the contrary, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the “HUD Requirements”). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Issuer’s ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower’s knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In the event of foreclosure (or deed in lieu of foreclosure) of the Mortgage Loan, the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate.

(e) Borrower and the Issuer acknowledge that Borrower’s failure to comply with the covenants provided in the Restrictive Covenants does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.

(f) Except for the Issuer’s reporting requirement, in enforcing the Restrictive Covenants the Issuer will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

- i. Available Surplus Cash, if the Borrower is a for-profit entity;
- ii. Available distributions of Surplus Cash and Residual Receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
- iii. Available Residual Receipts authorized by HUD, if the Borrower is a non-profit entity.

(g) For so long as the Mortgage Loan is outstanding, Borrower and Issuer shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD’s prior written consent.

(h) Subject to the HUD Regulatory Agreement, the Issuer may require the Borrower to indemnify and hold the Issuer harmless from all loss, cost, damage and expense arising from any claim or

proceeding instituted against Issuer relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Issuer harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.

(i) No action shall be taken in accordance with the rights granted herein to preserve the tax exemption of the interest on the notes or bonds, or prohibiting the owner from taking any action that might jeopardize the tax-exemption, except in strict accord with Program Obligations.

*[Signature Pages to Follow]*

Execution page of the Issuer to the HUD Rider.

**CITY OF BROOKLYN PARK, MINNESOTA**

By \_\_\_\_\_  
Its Mayor

By \_\_\_\_\_  
Its City Manager

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Jeffrey Lunde, the Mayor of the City of Brooklyn Park, Minnesota, on behalf of the City of Brooklyn Park, Minnesota.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Jay Stroebel, the City Manager of the City of Brooklyn Park, Minnesota, on behalf of the City of Brooklyn Park, Minnesota.

\_\_\_\_\_  
Notary Public

Execution page of the Borrower to the HUD Rider.

**AMORCE I LIMITED PARTNERSHIP,**  
a Minnesota limited partnership

By: Amorce I GP LLC,  
a Minnesota limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Name: Lori Boisclair  
Its: President/Chief Manager

STATE OF MINNESOTA     )  
  ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Lori Boisclair, the President/Chief Manager, of Amorce I GP LLC, a Minnesota limited liability company, the general partner of Amorce I Limited Partnership, a Minnesota limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public

Execution page of the Trustee to the HUD Rider.

**U.S. BANK NATIONAL ASSOCIATION**

By \_\_\_\_\_  
Its Vice President

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF RAMSEY     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019,  
by \_\_\_\_\_, the Vice President of U.S. Bank National Association, a national banking association,  
on behalf of the national banking association.

\_\_\_\_\_  
Notary Public

**Draft**  
**Friday, July 5, 2019**

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**REGULATORY AGREEMENT**

**among**

**CITY OF BROOKLYN PARK, MINNESOTA,**  
**as Issuer**

**U.S. BANK NATIONAL ASSOCIATION,**  
**as Trustee**

**and**

**AMORCE I LIMITED PARTNERSHIP,**  
**as Borrower**

Relating to:

**BROOK GARDENS APARTMENTS AND TOWNHOMES**  
5550 69th Avenue North, Brooklyn Park, Minnesota

**Dated as of August 1, 2019**

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This Instrument Drafted by:

Kennedy & Graven, Chartered (SEL)  
470 US Bank Plaza  
200 South Sixth Street  
Minneapolis, Minnesota 55402

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HUD RIDER TO RESTRICTIVE COVENANTS

## REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT, dated as of August 1, 2019 (the “Regulatory Agreement”), is made and entered into among the CITY OF BROOKLYN PARK, MINNESOTA, a home rule charter city and political subdivision organized under its charter and the laws of the State of Minnesota (the “Issuer” or “City”), U.S. BANK NATIONAL ASSOCIATION, a national banking association (the “Trustee”), and AMORCE I LIMITED PARTNERSHIP, a Minnesota limited partnership (the “Borrower”).

### RECITALS

The Issuer is authorized to issue bonds to provide financing for multifamily housing developments in accordance with the terms of Minnesota Statutes, Chapters 462C and 462A, as amended.

For the purpose of refunding the outstanding Multifamily Housing Revenue Note (Amorce I Limited Partnership Project), Series 2017, dated May 9, 2017 (the “Prior Note”), issued by the Issuer in the original aggregate principal amount of \$15,000,000 to finance the acquisition and rehabilitation of 170 units of multifamily rental apartments, and facilities functionally related and subordinate thereto, commonly known as Brooks Landing Apartments (“Brooks Landing”) and Brook Gardens Apartments and Townhomes (“Brook Gardens”), located at 5825 74th Avenue North and 5550 69th Avenue North, respectively, in the City, the Issuer will issue its (i) Multifamily Housing Revenue Refunding Bonds (Amorce I Limited Partnership Project), Series 2019A (the “Series 2019A Bonds”), in the original aggregate principal amount of \$[8,540,000], pursuant to the terms of a Trust Indenture, dated as of August 1, 2019 (the “Indenture”), between the Issuer and the Trustee, and (ii) Multifamily Housing Revenue Refunding Note (Amorce I Limited Partnership Project), Series 2019B (the “Series 2019B Note and, together with the Series 2019A Bonds, the “Bonds”), in the original aggregate principal amount of \$[5,250,000].

The Issuer will loan the proceeds derived from the sale of the Series 2019A Bonds to the Borrower pursuant to the terms of a Loan Agreement, dated as of August 1, 2019 (the “Series 2019A Loan Agreement”), between the Issuer and the Borrower, and will loan the proceeds derived from the sale of the Series 2019B Note to the Borrower pursuant to the terms of a Loan Agreement, dated as of August [\_\_\_], 2019 (the “Series 2019B Loan Agreement” and, together with the Series 2019A Loan Agreement, the “Loan Agreements”), between the Issuer and the Borrower to refinance the acquisition and rehabilitation of Brooks Landing (the “Brooks Landing Project”) and Brook Gardens (the “Brook Gardens Project”).

For good and valuable consideration, the Borrower, the Trustee, and the Issuer have determined to enter into this Regulatory Agreement in order to impose certain requirements of the Code and of the Act (each as hereinafter defined) applicable to Brooks Landing, legally described on Exhibit A hereto.

NOW, THEREFORE, the Borrower, the Trustee, and the Issuer do hereby impose upon the Brook Gardens Project the following covenants, restrictions, charges, and easements, which shall run with the land and shall be binding and a burden upon the Brook Gardens Project and all portions thereof, and upon any purchaser, grantee, owner, or lessee of any portion of the Brook Gardens Project and any other person or entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors, and assigns of any purchaser, grantee, owner, or lessee of any portion of the Brook Gardens Project and any other person or entity having any right, title, or interest therein, for the length of time that this Regulatory Agreement shall be in full force and effect:

**Section 1. Definitions.** Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the terms defined above shall have the meanings set forth above and the following terms

shall have the respective meanings set forth below for the purposes hereof. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Indenture.

“*Act*” means Minnesota Statutes, Chapters 462C and 462A, as amended.

“*Adjusted Income*” means the adjusted income of a person (together with the adjusted income of all persons of the age of 18 years or older who intend to reside with such person in one Dwelling Unit), as calculated in the manner prescribed under Section 142(d)(2)(B) of the Code.

“*Bond Counsel*” means Kennedy & Graven, Chartered, or any other attorney at law or firm of attorneys, of nationally-recognized standing in matters pertaining to the federal tax exemption of interest on bonds and other obligations issued by states and political subdivisions thereof, duly admitted to practice law before the highest court of any state of the United States of America.

“*Bond Resolution*” means Resolution No. [\_\_\_\_], adopted by the Issuer on July 22, 2019 authorizing the issuance and delivery of the Bonds.

“*Bonds*” means, collectively, the Series 2019A Bonds and the Series 2019B Note.

“*Borrower*” means Amorice I Limited Partnership, a Minnesota limited partnership, and its lawful successors and assigns to the extent permitted by the Loan Agreements.

“*Brook Gardens Project*” has the meaning assigned to such term in the recitals to this Regulatory Agreement.

“*Certificate of Continuing Program Compliance*” means the document substantially in the form of EXHIBIT C hereto.

“*City*” means the City of Brooklyn Park, Minnesota.

“*Code*” means the Internal Revenue Code of 1986, as amended, and all applicable regulations (whether proposed, temporary or final) under the Code and the statutory predecessor of the Code, and any official rulings and judicial determinations under the foregoing applicable to the Bonds.

“*County*” means Hennepin County in the State.

“*Dwelling Units*” means the units of multifamily residential rental housing comprising the Project, excluding any unit used as a management office.

“*Event of Default*” has the meaning specified in Section 13 hereof.

“*Functionally Related and Subordinate*” shall mean and include facilities for use by tenants, for example, laundry facilities, parking areas, and recreational facilities, provided that the same is of a character and size commensurate with the character and size of the Project.

“*Housing Act*” means the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq.

“*Indenture*” means, the Trust Indenture, dated August 1, 2019, between the Issuer and the Trustee, its successors and assigns, related to the Series 2019A Bonds.

“*Issuer*” means the City of Brooklyn Park, Minnesota, a home rule charter city and political subdivision organized under its charter and the laws of the State of Minnesota.

“*Land*” means the real property described on EXHIBIT A attached hereto.

“*Loans*” means collectively, each of the loans provided by the Issuer to the Borrower pursuant to the Loan Agreements to provide refinancing for the Brooks Landing Project and Brook Gardens Project.

“*Loan Agreements*” means, collectively the Series 2019A Loan Agreement and the Series 2019B Loan Agreement.

“*Low Income Tenants*” means persons or families with Adjusted Income which does not exceed 60% of the Median Income for the Area adjusted for household size. In no event will the occupants of a unit be considered to be Low Income Tenants if all of such occupants are students (as defined in Section 152(f)(2) of the Code), unless the unit is occupied:

(i) by an individual who is (A) a student and receiving assistance under Title IV of the Social Security Act, (B) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under Part B or Part E of Title IV of the Social Security Act, or (C) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar federal, State, or local laws; or

(ii) entirely by full-time students if such students are (A) single parents and their children and such parents are not dependents (as defined in Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual and such children are not dependents (as defined in Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual other than a parent of such children, or (B) married and entitled to file a joint return.

“*Low Income Units*” means the Dwelling Units in the Project designated for occupancy by Low Income Tenants pursuant to Section 4(a) of this Regulatory Agreement.

“*Median Income for the Area*” means the median yearly income for households of an applicable size in the applicable Primary Metropolitan Statistical Area as most recently determined by the Secretary of Housing and Urban Development under Section 8(f)(3) of the Housing Act, or, if such figures are no longer available, the method of calculation is substantially altered, or the programs under Section 8(f) are terminated, the Issuer shall provide the Borrower with another income determination that is reasonably similar to the method used by the Secretary prior to such termination.

“*Project*” has the meaning assigned to such term in the recitals to this Regulatory Agreement.

“*Qualified Project Period*” means the period beginning on the later of the date of issuance of the Bonds and the first day on which 10% of the Dwelling Units in the Project are occupied and ending on the latest of:

(i) the date which is 15 years after the date on which 50% of the Dwelling Units in the Project are occupied;

(ii) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding, or

(iii) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates.

“*Regulatory Agreement*” means this Regulatory Agreement, together with any amendments or supplements hereto.

“*Section 474A Penalty*” means the penalty described in Minnesota Statutes, Section 474A.047, subdivision 3, as applied to the Project.

“*Series 2019A Bonds*” means the Issuer’s Multifamily Housing Revenue Refunding Bonds (Amorce I Limited Partnership Project), Series 2019A, issued in the original aggregate principal amount of \$[8,540,000].

“*Series 2019A Loan Agreement*” means the Loan Agreement, dated as of August 1, 2019, between the Issuer and the Borrower, related to the Series 2019A Bonds.

“*Series 2019B Note*” means the Issuer’s Multifamily Housing Revenue Refunding Note (Amorce I Limited Partnership Project), Series 2019B, issued in the original aggregate principal amount of \$[5,250,000].

“*Series 2019B Loan Agreement*” means the Loan Agreement, dated as of August [\_\_\_], 2019, between the Issuer and the Borrower, related to the Series 2019B Note.

“*State*” means the State of Minnesota.

“*Treasury Regulations*” means the regulations promulgated or proposed by the Department of the Treasury pursuant to the Code from time to time or pursuant to any predecessor statute to the Code.

“*Trustee*” means U.S. Bank National Association, a national banking association, or any successor or assign.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement words of the masculine, feminine or neuter gender shall be construed to include each other gender when appropriate, and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Regulatory Agreement and all of the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

**Section 2. Representations by the Borrower.** The Borrower covenants, represents, and warrants that:

(a) The Borrower is a limited partnership organized and existing under the laws of the State. The Borrower is in good standing in the State and has duly authorized, by proper action, the execution and delivery of this Regulatory Agreement. The Borrower is duly authorized by the laws of the State to transact business in the State and to perform all of its duties hereunder.

(b) Neither the execution and delivery of this Regulatory Agreement or any other document in connection with the financing of the Project, the consummation of the transactions contemplated hereby and thereby nor the fulfillment of or compliance with the terms and conditions hereof and thereof conflicts with or results in a breach of any of the terms, conditions, or provisions of any agreement or instrument to which the Borrower is now a party or by which it is bound or constitutes a default (with due notice or the passage of time or both) under any of the foregoing or results in the creation or imposition of any prohibited

lien, charge, or encumbrance whatsoever upon any of the property or assets of the Borrower under the terms of any instrument or agreement to which the Borrower is now a party or by which it is bound.

(c) The execution, delivery, and performance of this Regulatory Agreement and all other documents to be delivered by the Borrower in connection with the consummation of the transactions contemplated hereby will not conflict with, or constitute a breach of or default under, any indenture, mortgage, deed of trust, lease, commitment, agreement, or other instrument or obligation to which the Borrower is a party or by which the Borrower or any of its property is bound, or under any law, rule, regulation, judgment, order, or decree to which the Borrower is subject or by which the Borrower or any of its property is bound.

(d) To the best of the Borrower's knowledge, there is no action, suit, proceeding, inquiry, or investigation by or before any governmental agency, public board, or body pending or threatened against the Borrower (nor to the best of its knowledge is there any basis therefor), which:

(i) affects or seeks to enjoin, prohibit, or restrain the issuance, sale, or delivery of the Bonds or the use of the proceeds of the Bonds to finance the acquisition, rehabilitation, and equipping of the Project or the execution and delivery of this Regulatory Agreement,

(ii) affects or questions the validity or enforceability of the Bonds or this Regulatory Agreement,

(iii) questions the tax-exempt status of the Bonds, or

(iv) questions the power or authority of the Borrower to own, acquire, rehabilitate, equip or operate the Project or to execute, deliver, or perform the Borrower's obligations under this Regulatory Agreement.

(e) The Project will be located wholly within the boundaries of the City.

(f) On and after the date on which the Bonds are executed and delivered to the Trustee, the Borrower will have title to the Project sufficient to carry out the purposes of this Regulatory Agreement, and such title shall be in and remain in the name of the Borrower except as otherwise permitted by this Regulatory Agreement.

(g) The Brook Gardens Project consists and will consist of those facilities described herein, which generally are described as a residential apartment building and related facilities situated on the Land. The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the exemption from federal income taxation of the interest on the Bonds. The Borrower will utilize and operate the Project as a multifamily rental housing project during the term of the Bonds in accordance with all applicable federal, State, and local laws, rules, and regulations applicable to the Project.

(h) The Borrower has obtained, or will obtain on or before the date required therefor, all necessary certificates, approvals, permits, and authorizations with respect to the operation of the Project.

(i) The Borrower does not and will not own any of the Bonds. The Borrower acknowledges and understands that during any period of time when the Borrower owns the Bonds, the interest on the Bonds shall not be tax-exempt pursuant to Section 147(a) of the Code.

(j) The Borrower does not own any buildings or structures which are proximate to the Project other than those buildings or structures which comprise the Project, which are being financed pursuant to a common plan under which the Project is also being financed.

(k) The statements made in the various certificates delivered by the Borrower to the Issuer or the Trustee on the date of issuance of the Bonds are true and correct.

**Section 3. Qualified Residential Rental Project.** The Borrower shall acquire, rehabilitate, equip, own, manage, and operate the Project as a “qualified residential rental project,” as such phrase is utilized in Section 142(d) of the Code, on a continuous basis during the Qualified Project Period. To that end, the Borrower hereby represents, warrants, and covenants as follows:

(a) that a qualified residential rental project will be rehabilitated on the Land, and the Borrower shall own, manage and operate the Project as a qualified residential rental project containing Dwelling Units and facilities Functionally Related and Subordinate to such Dwelling Units, in accordance with Section 142(a)(7) and Section 142(d) of the Code and all applicable Treasury Regulations promulgated thereunder, as the same may be amended from time to time;

(b) that all of the Dwelling Units of the Project will be similarly constructed and rehabilitated and each Dwelling Unit in the Project will contain complete facilities for living, sleeping, eating, cooking, and sanitation for a single person or a family;

(c) that:

(i) none of the Dwelling Units in the Project shall at any time in the future be utilized on a transient basis;

(ii) that none of the Dwelling Units in the Project shall at any time in the future be leased or rented for a period of less than 30 days; and

(iii) that neither the Project nor any portion thereof shall be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home, or trailer park or trailer court for use on a transient basis, or by a cooperative housing corporation (as defined in Section 216(b)(1) of the Code);

(d) that once available for occupancy:

(i) each Dwelling Unit in the Project must be rented or available for rental on a continuous basis to members of the general public during the Qualified Project Period; and

(ii) the Borrower shall not give preference in renting Dwelling Units in the Project to any particular class or group of persons, other than Low Income Tenants as provided herein or as otherwise permitted by law;

(e) that the Dwelling Units in the Project shall be leased and rented to members of the general public in compliance with this Regulatory Agreement, except for any Dwelling Unit for a resident manager or maintenance personnel;

(f) that the Project consists of one or more discrete edifices and other man-made construction, each consisting of an independent foundation, outer walls and roof, all of which will be (i) owned by the same person for federal tax purposes, (ii) located on a common tract of land or two or more parcels of land

which are contiguous except for being separated only by a road, street, stream, or a similar property and (iii) financed by the Loans or otherwise pursuant to a common plan of financing, and which consists entirely of:

- (i) units which are similar in quality and type of construction and amenities; and
- (ii) property Functionally Related and Subordinate in purpose and size to the Project, *e.g.*, parking areas, laundries, swimming pools, tennis courts, and other recreational facilities (none of which may be unavailable to any person because such person is a Low Income Tenant) and other facilities which are reasonably required for the Project, *e.g.*, heating and cooling equipment, trash disposal equipment, or units for residential managers or maintenance personnel;
- (g) that no portion of the Project shall be used to provide any health club facility, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;
- (h) that the Project shall not include a Dwelling Unit in a building where all Dwelling Units in such building are not also included in the Project;
- (i) that the Borrower shall not convert the Project to condominium or cooperative ownership;
- (j) that no Dwelling Unit in the Project shall be occupied by the Borrower (or any person related to the Borrower within the meaning of Section 147(a)(2) of the Code) at any time unless such person resides in a Dwelling Unit in a building or structure which contains at least five Dwelling Units and unless the resident of such Dwelling Unit is a resident manager or other necessary employee (*e.g.*, maintenance and security personnel);
- (k) that the Bonds will not be “federally guaranteed,” as defined in Section 149(b) of the Code;
- (l) that the Project shall at all times be used and operated as a “multifamily housing development,” as defined in the Act; and
- (m) that the Borrower shall not discriminate on the basis of race, creed, color, sex, sexual preference, source of income (*e.g.*, AFDC or SSI), physical disability, national origin, or marital status in the rental, lease, use, or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.

**Section 4. Low Income Tenants.** Pursuant to the requirements of the Act and Section 142(d) of the Code, the Borrower hereby represents, warrants, and covenants as follows:

- (a) Upon completion of the Project, at least 40% of the units in the Project will be occupied or held for occupancy by Low Income Tenants. Throughout the Qualified Project Period, not less than 40% of the completed units in the Project shall be continuously occupied or held for occupancy by Low Income Tenants. The Borrower will designate the Low Income Units and will make any revisions to such designations as necessary to comply with the applicable provisions of the Code and the Treasury Regulations. As set forth in paragraph (e) below, the Borrower shall advise the Issuer and the Trustee by delivery of a certificate in writing of the status of the occupancy of the Project with respect to Low Income Tenants on an annual basis for the term of this Regulatory Agreement. An Annual Certification of a Residential Rental Project, Form 8703 (Rev. September 2013), or successor form, shall be prepared annually by the Borrower and filed with the United States Secretary of the Treasury pursuant to Section 142(d)(7) of the Code (currently with the Internal Revenue Service Center, Ogden, Utah 84201), with a

copy to be filed by the Borrower with the Issuer and the Trustee. The percentage of units is measured by number of units, and not square footage of units.

For purposes of satisfying the occupancy requirements set forth above, a unit occupied by a person or family who at the commencement of their occupancy qualified as a Low Income Tenant shall be treated as occupied by a Low Income Tenant until such time as any re-certification of such tenant's income in accordance with Sections 4(c) and (h) below demonstrates that such tenant's income exceeds 140% of the income limitation applicable to Low Income Tenants.

A unit occupied by a Low Income Tenant shall be deemed, upon the termination of such tenant's occupancy, to be continuously occupied by a Low Income Tenant until reoccupied, other than for a temporary period (not to exceed 60 days), at which time the character of the unit shall be redetermined.

(b) The Borrower will notify the Issuer on an annual basis of any vacancy of any Low Income Units.

(c) The Borrower will obtain, complete, and maintain on file income certifications from each Low Income Tenant, obtained immediately prior to the initial occupancy of such tenant in the Project, and thereafter re-obtain in any year in which a unit in the Project is occupied by a new resident whose income exceeds the applicable income limit, income certifications (based upon their then current income), from each Low Income Tenant, substantially in the form of the income certification set forth in EXHIBIT B hereto or another form approved by Bond Counsel (the "Income Certification") and will provide such additional information as may be required by Section 142(d) of the Code, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures, Treasury Regulations now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service applicable to the Bonds. Such Income Certification shall be obtained prior to initial occupancy. If requested in writing by the Issuer, a copy of such Income Certification shall be filed with the Issuer prior to occupancy by the tenant whenever possible but in no event more than one month after initial occupancy by the tenant. A copy of each re-certification of income shall be attached to each report filed with the Issuer pursuant to Section 4(a) above. The Borrower shall make a good-faith effort to verify that the income reported by an applicant in an income certification is accurate by taking at least one of the following steps as a part of the verification process: (1) obtain a pay stub for the most recent pay period, (2) obtain an income tax return for the most recent tax year, (3) conduct a credit or similar search, (4) obtain an income verification form from the applicant's current employer, (5) obtain an income verification form from the Social Security Administration if the applicant receives assistance from such agency, or (6) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. If the Low Income Tenant is a Section 8 Certificate Holder, the Borrower shall retain a copy of the certificate or voucher for verification of income in lieu of an income verification.

The Borrower understands that failure to file the Annual Certification of a Residential Rental Project, Form 8703 (Rev. September 2013), or successor form, as required by Section 142(d)(7) of the Code at the times stated therein may subject it to the penalty described in Section 6652(j) of the Code.

(d) The Borrower will maintain complete and accurate records pertaining to the Low Income Units and will permit, upon reasonable prior notice, any duly authorized representative of the Issuer, the Trustee, the Department of the Treasury, or the Internal Revenue Service to inspect the books and records of the Borrower pertaining to the Project, including those records pertaining to the occupancy of the Low Income Units. This section is not intended to create any additional duties to inspect records.

(e) The Borrower will prepare and submit to the Issuer and the Trustee, on or before March 1 of each year during the Qualified Project Period, beginning the first March 1 following commencement of

the Qualified Project Period, a Continuing Program Compliance Certificate in the form of EXHIBIT C attached hereto and executed by the Borrower, and, if requested by the Issuer the Income Certifications described in Section 4(c) above. The Trustee may solely rely on the Continuing Program Compliance Certificate as evidence of compliance with this Section 4.

(f) The Borrower, upon becoming aware of an Event of Default, will notify the Issuer and the Trustee, in writing, of the occurrence of any such Event of Default hereunder or any event which, with the passage of time or service of notice, or both, would constitute an Event of Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto. Such notice shall be given promptly and in no event longer than 10 Business Days after the Borrower receives notice or gains knowledge of the occurrence of any such event. The Borrower further agrees that it will give prompt written notice to the Issuer and the Trustee if insurance proceeds or condemnation awards are received with respect to the Project and are not used to repair or replace the Project, which notice shall state the amount of such proceeds or award.

(i) Except as provided in (ii) below, the Borrower shall accept as tenants on the same basis as all other prospective tenants Low Income Tenants who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the Housing Act or its successor and shall not apply selection criteria to Section 8 certificate/voucher holders that are more burdensome than the criteria applied to all other prospective tenants.

(ii) The Borrower agrees to modify the leases for units in the Project as necessary to allow the rental of Low Income Units to Section 8 certificate/voucher holders.

(g) Each lease pertaining to a Low Income Unit shall contain a provision to the effect that the Borrower has relied on the income certification and supporting information supplied by the Low Income Tenant in determining qualification for occupancy of the Low Income Unit and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease.

(h) Throughout the Qualified Project Period, the Borrower shall recertify each Low Income Tenant's income on or before the anniversary of the Low Income Tenant's tenancy, in any year in which a unit in the Project is occupied by a new resident whose income exceeds the applicable income limit, by obtaining a completed Income Certification. In the event the re-certification demonstrates that any such tenant's household income exceeds 140% of the applicable income limit, the Borrower shall hold the next available unit or units of comparable or smaller size in the Project available for rental by new Low Income Tenants.

The Borrower in its sole discretion may notify, in writing, each tenant who is no longer a Low Income Tenant of such fact, and that the rent of such tenant(s) is subject to increase 30 days after receipt of such notice. The Borrower shall be entitled to so increase any such tenant's rent only if Borrower complies with any law applicable thereto and only after the Borrower has rented the next available unit or units in the Project on a one-for-one basis to a Low Income Tenant, or holds units vacant and available for occupancy by Low Income Tenants.

The Borrower agrees to inform all prospective Low Income Tenants of the requirements for re-certification of income and of the provisions of the preceding paragraph.

**Section 5. Restrictions Imposed by Minnesota Statutes Chapter 474A.** Because the Bonds are issued by the Issuer as residential rental project bonds, as defined in Minnesota Statutes, Chapter 474A, as amended ("Chapter 474A"), and the Issuer has received an allocation of tax-exempt bonding authority

pursuant to applicable provisions of Chapter 474A, the restrictions imposed by Chapter 474A apply to the Project as described below.

(a) In addition to any other restrictions on rent or the income of tenants set forth in this Regulatory Agreement, during the Qualified Project Period, the Borrower shall restrict rents on at least 20% of the units in the Project (which may consist of the same units as meet the requirements of Section 4) to an amount not exceeding the area fair market rents or exception fair market rents, as applicable, for existing housing as established by the federal Department of Housing and Urban Development from time to time, which units shall be occupied, or held for occupancy, by Low Income Tenants. The rental rates of units in a residential rental project for which rental assistance payments are made are deemed to be within the rent limitations of this clause if the amount paid by the tenants is less than the fair market rents.

(b) The annual certifications required to be made by the Borrower hereunder shall conform to the requirements of Section 474A.047, subdivision 2, and the Issuer shall have the authority to impose upon the Borrower any and all penalties described in Section 474A.047, subdivision 3, from time to time, in addition to any remedies otherwise available under this Regulatory Agreement.

(c) The Borrower must satisfy the requirements of Section 474A.047, subdivision 1(a), during the Qualified Project Period. The Borrower must annually certify to the Issuer over the term of this Regulatory Agreement that the rental rates for the rent-restricted units are within the limitations under Section 474A.047, subdivision 1(a), of Chapter 474A. The Issuer may request individual certification of the income of residents of the income-restricted units. The Commissioner of Minnesota Management and Budget may request from the Issuer a copy of the annual certification prepared by the Borrower. The Commissioner of Minnesota Management and Budget may require the Issuer to request individual certification of all residents of the income-restricted units. Notwithstanding anything to the contrary contained in this Section 5, the rental rates of all units in the Project for which project-based federal assistance payments will be made under a Section 8 Housing Assistance Payment Contract, are deemed to be within the rent limitations of Section 474A.047, subdivision 1(a) of Chapter 474A.

**Section 6. Covenants Run with the Land.** The Borrower hereby declares its express intent that the covenants, restrictions, charges, and easements set forth herein shall be deemed covenants running with the Land and shall, except as otherwise provided in this Regulatory Agreement, pass to and be binding upon the Borrower's successors in title including any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors, and assigns of any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein. Except as otherwise provided in this Regulatory Agreement, each and every contract, deed, or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants, restrictions, charges, and easements contained herein; provided, however, that any such contract, deed, or other instrument shall conclusively be held to have been executed, delivered, and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed, or other instrument.

**Section 7. Indemnification.** The Borrower hereby covenants and agrees that it shall indemnify and hold harmless the Issuer and the Trustee and their officers, agents, officials, directors, representatives and employees (the "Indemnified Parties") as provided in the Loan Agreements. All provisions of the Loan Agreements relating to indemnification are incorporated by reference herein and are considered provisions of this Regulatory Agreement, as if expressly set out herein.

**Section 8. Consideration.** The Issuer has issued the Bonds in part to provide funds to make the Loans to finance the acquisition, rehabilitation, and equipping of the Project all for the purpose, among others, of inducing the Borrower to acquire, rehabilitate, equip, and operate the Project. In consideration of the issuance of the Bonds by the Issuer, the Borrower has entered into this Regulatory Agreement and has agreed to restrict the uses to which the Project can be put on the terms and conditions set forth herein.

**Section 9. Reliance.** The Issuer and the Borrower hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all persons interested in the legality and validity of the Bonds and in the exemption from federal income taxation of the interest on the Bonds. In performing their duties and obligations hereunder and under the Indenture, the Issuer and the Trustee may rely upon statements and certificates of the Borrower and the tenants and upon audits of the books and records of the Borrower pertaining to the Project. In addition, the Issuer and the Trustee may consult with counsel, and the written opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Issuer or the Trustee hereunder in good faith and in conformity with such written opinion. A copy of any such opinion shall be furnished by the Issuer or the Trustee to the Borrower upon written request. In determining whether any default or lack of compliance by the Borrower exists under this Regulatory Agreement, the Issuer or the Trustee shall not be required to conduct any investigation into or review of the operations or records of the Borrower and may rely solely on any notice or certificate delivered to the Issuer or the Trustee by the Borrower with respect to the occurrence or absence of a default unless it knows, or in the exercise of reasonable care should have known, that the notice or certificate is erroneous or misleading.

The Trustee and the Issuer shall be under no duty to make any investigation or inquiry as to any statements or other matters contained or referred to in any documents or any instruments delivered to it in accordance with this Regulatory Agreement, but it may receive and accept the same as conclusive evidence of the truth and accuracy of such statements.

**Section 10. Sale or Transfer of the Project.** The Borrower hereby covenants and agrees not to sell, transfer, or otherwise dispose of the Project, or any portion thereof, except as permitted under the terms of the Loan Agreements. Any attempted sale, transfer, or disposition which would cause or result in the violation of any of these covenants, provisions, reservations, restrictions, charges, or easements shall be null and void ab initio and of no force and effect. Nothing herein shall prohibit the transfer, sale or assignment of the interests in the Borrower or any direct or indirect ownership interests in the Borrower's partners.

**Section 11. Term.** This Regulatory Agreement and the terms hereof shall become effective upon its execution and delivery and shall remain in full force and effect for a term and period equal to the Qualified Project Period, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Bonds and termination of the Loan Agreements and the Loans if the Qualified Project Period has not expired at the time of such retirement and expiration. Notwithstanding anything in this Regulatory Agreement to the contrary:

(a) The Project may be transferred pursuant to a foreclosure, exercise of power of sale, or deed in lieu of foreclosure, or comparable proceedings without the consent of or fee of any kind payable to the Issuer or compliance with the provisions of this Regulatory Agreement. In connection with any such foreclosure, deed in lieu of foreclosure, or other proceedings, this Regulatory Agreement shall be terminated upon completion of the foreclosure and expiration of the applicable redemption period, or recording of a deed in lieu of foreclosure.

(b) The requirements of this Regulatory Agreement shall terminate and be of no further force and effect in the event of involuntary noncompliance with the provisions of this Regulatory Agreement

caused by fire or other casualty, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law, or an action of a federal agency after the date of this Regulatory Agreement, which prevents the Issuer and the Trustee from enforcing such provisions, or condemnation or a similar event, but only if, within a reasonable period, either the Bonds are retired or amounts received as a consequence of such event are used to provide a project that meets the requirements hereof (provided that this shall be deemed met if the Bonds have been previously retired); provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure, or the delivery of a deed in lieu of foreclosure, or a similar event, the Borrower or any related person (within the meaning of Section 1.103-10(e) of the Treasury Regulations) obtains an ownership interest in the Project for federal income tax purposes. The Borrower hereby agrees that, following any foreclosure, transfer of title by deed in lieu of foreclosure, or similar event, neither the Borrower nor any such related person as described above will obtain an ownership interest in the Project for federal tax purposes.

(c) This Regulatory Agreement, or any of the provisions or sections hereof, may be terminated upon agreement by the Issuer and the Borrower, upon receipt of an opinion of Bond Counsel to the effect that such termination will not cause interest on the Bonds to become included in gross income for federal income tax purposes or cause interest on the Bonds to become included in the net taxable income of individuals, trusts, and estates for State income tax purposes.

Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver, and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms.

**Section 12. Burden and Benefit.** The Issuer and the Borrower hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the Land in that the Borrower's legal interest in the Project is rendered less valuable thereby. The Issuer and the Borrower hereby further declare their understanding and intent that the benefit of such covenants touch and concern the Land by enhancing and increasing the enjoyment and use of the Project by Low Income Tenants, the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes for which the Bonds were issued. Notwithstanding the foregoing, the Low Income Tenants are not intended to be third-party beneficiaries of this Regulatory Agreement and shall have no rights to enforce any provision herein.

**Section 13. Enforcement.** If the Borrower defaults in the performance or observance of any covenant, agreement, or obligation of the Borrower set forth in this Regulatory Agreement, and if such default remains uncured for a period of 60 days after written notice thereof shall have been given by the Issuer or the Trustee to the Borrower, then the Issuer, or the Trustee, acting upon the direction of the holders of the Series 2019A Bonds pursuant to the Indenture, may declare an "Event of Default" to have occurred hereunder and, at its option, may take any one or more of the following steps:

(a) by mandamus or other suit, action, or proceeding at law or in equity require the Borrower to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer, the Trustee, or the holders of the Bonds hereunder;

(b) have access to and inspect, examine, and make copies of all the books and records of the Borrower pertaining to the Project;

(c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants, and agreements of the Borrower hereunder; or

(d) with the Trustee's consent, declare a default under the Loans, accelerate the indebtedness evidenced by the Loans, and proceed to redeem the Bonds in accordance with their terms.

Notwithstanding anything to the contrary contained herein, the Issuer and the Trustee hereby agree that any cure of any default made or tendered by one or more of Borrower's partners shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

All fees, costs, and expenses of the Trustee or the Issuer incurred in taking any action pursuant to this Section 13 shall be the sole responsibility of the Borrower and shall be paid to the Trustee or the Issuer, as the case may be, on demand.

After the Bonds have been discharged, the Issuer may act on its own behalf to declare an "Event of Default" to have occurred and to take any one or more of the steps specified hereinabove to the same extent and with the same effect as if taken by the Trustee at the direction of the holders of the Bonds.

**Section 14. The Trustee and the Issuer.** The Trustee is entering into this Regulatory Agreement in its capacity as the Trustee under the terms of the Bonds and the Indenture. The Issuer may, at all times, assume the Borrower's compliance with this Regulatory Agreement unless otherwise notified in writing by the Trustee (but the Trustee shall have no obligation to so notify the Issuer), or unless the Issuer has actual knowledge of noncompliance. The Trustee can rely on the accuracy of any certificates, instruments, opinions, or reports delivered to it by the Borrower. It is expected that the Bonds will be discharged and the Indenture will terminate prior to the expiration of the Qualified Project Period. Following the payment in full and the discharge of the Bonds and the termination of the Indenture: (i) all obligations, rights, and duties of the Trustee under this Regulatory Agreement will terminate and be of no further force and effect; (ii) all actions required by the Trustee will instead be undertaken by the Issuer; (iii) all notices to be delivered to the Trustee will instead be delivered to the Issuer and all notices to be delivered by the Trustee will instead be delivered by the Issuer; and (iv) the Trustee shall no longer be a party to this Regulatory Agreement and shall be considered released from all obligations hereunder.

**Section 15. Amendment.** The provisions hereof shall not be amended or revised prior to the stated term hereof except by an instrument in writing duly executed by the Issuer and the Borrower, and consented to by the Trustee as may be required by the Loan Agreements, and duly recorded. The Issuer's and the Trustee's consent to any such amendment or revision (whether or not the Bonds shall then be outstanding) shall be given only upon receipt of an opinion of Bond Counsel addressed to the Issuer and Trustee that such amendment or revision will not adversely affect the exemption from federal income taxation of interest on the Bonds. Neither the Issuer nor the Trustee shall have a duty to prepare any such consent, amendment, or revision.

**Section 16. Right of Access to the Project and Records.** The Borrower agrees that during the term of this Regulatory Agreement, the Issuer, the Trustee, and the duly authorized agents of either of them shall have the right at all reasonable times, and upon reasonable notice of at least 24 hours, to enter upon the site of the Project during normal business hours to examine and inspect the Project and to have access to the books and records of the Borrower with respect to the Project, a copy of which shall be maintained at the site of the Project.

**Section 17. No Conflict with Other Documents.** The Borrower warrants that it has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof.

**Section 18. Severability.** The invalidity of any clause, part, or provision of this Regulatory Agreement shall not affect the validity of the remaining portions thereof.

**Section 19. Notices.** All notices to be given pursuant to this Regulatory Agreement shall be in writing and shall be deemed given when sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods or when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing:

To the Issuer:	City of Brooklyn Park, Minnesota 5200 85th Avenue North Brooklyn Park, Minnesota 55443 Attention: LaTonia Green, Finance Director
To the Trustee:	U.S. Bank National Association Corporate Trust Services 60 Livingston Avenue, 3rd Floor EP-MN-WS3C Saint Paul, Minnesota 55107-2292 Attn: Dan Sheff
To the Borrower:	Amorce I Limited Partnership c/o Boisclair Corporation 3033 Excelsior Blvd, Suite 215 Minneapolis, Minnesota 55416 Attention: Lori Boisclair, President
With a copy to:	Winthrop & Weinstine, P.A. Capella Tower, Suite 3500 225 South Sixth Street Minneapolis, MN 55402-4629 Attn: Todd B. Urness, Esq. and Erin E. Mathern, Esq.
To Investor Limited Partner:	WNC Holding, LLC c/o WNC & Associates, Inc. 37 West Bridge Street, Suite 203 Dublin, OH 43017 Attn: Michael Simmerman
With a copy to:	Barnes & Thornburg LLP 41 South High Street, Suite 3300 Columbus, OH 43215-6104 Attention: Phillip R. Westerman, Esq.

**Section 20. Governing Law.** This Regulatory Agreement shall be governed by and construed in accordance with the laws and judicial decisions of the State, except as such laws may be preempted by any federal rules, regulations, and laws.

**Section 21. Payment of Fees.** Notwithstanding payment of the Loan, the termination of the Loan Agreements, and the defeasance or discharge of the Bonds, throughout the term of the Qualified Project Period, the Borrower shall continue to pay:

(a) to the Issuer, reimbursement for all reasonable fees and expenses, including, but not limited to, financial advisory and legal fees and expenses necessary for the Issuer's reviewing and, if necessary, enforcing compliance by the Borrower with the terms of this Regulatory Agreement; and

(b) the fees and expenses of any entity or person designated by the Issuer to perform the review of the Borrower's compliance with this Regulatory Agreement; provided that such fees and expenses are not duplicative of any fees and expenses paid under (a) above.

**Section 22. Limited Liability** All obligations of the Issuer hereunder shall be special, limited obligations of the Issuer, payable solely and only from proceeds of the Bonds and amounts derived by the Issuer from the Loans and the Loan Agreements.

**Section 23. Actions of Issuer.** The Issuer shall be entitled to rely conclusively on an opinion of counsel in the exercise or non-exercise of any of the rights or powers vested in the Issuer by virtue of this Regulatory Agreement or any other agreement or instrument executed in connection with the issuance of the Bonds; it being the intent of the parties hereto that the Issuer, and any and all present and future trustees, members, commissioners, officers, employees, attorneys, and agents of the Issuer shall not incur any financial or pecuniary liability for the exercise or non-exercise of any rights or powers vested in the Issuer by this Regulatory Agreement or any other instrument or agreement executed in connection with the issuance of the Bonds; or for the performance or nonperformance of any obligation under, or the failure to assert any right, power, or privilege under this Regulatory Agreement, the Bonds, the Loan Agreements, the Indenture or any other instrument or agreement executed in connection with the issuance of the Bonds. If the Issuer's consent or approval is required under this Regulatory Agreement, or any other agreement or instrument executed in connection with the issuance of the Bonds, the Issuer shall be entitled to rely conclusively on an opinion of counsel and shall not be responsible for any loss or damage resulting from any action or inaction in reliance upon such opinion.

**Section 24. Counterparts.** This Regulatory Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Regulatory Agreement, and, in making proof of this Regulatory Agreement, it shall not be necessary to produce or account for more than one such counterpart.

**Section 25. Recording and Filing.** The Borrower shall cause this Regulatory Agreement and all amendments and supplements hereto and thereto to be recorded and filed in the real property records of the County, the State, and in such other places as the Issuer may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording.

**Section 26. HUD Rider to Regulatory Agreement.** The HUD Rider to Restrictive Covenants (the "HUD Rider") attached to this Regulatory Agreement is hereby made a part of this Regulatory Agreement. In the event of a conflict between the provisions of the HUD Rider and the provisions of this Regulatory Agreement, the provisions of the HUD Rider shall control.

**Section 27. Additional Approvals.** Subsequent to issuance of the Bonds, the officers of Issuer are hereby authorized and directed to execute and provide all certified copies, certificates, affidavits, disclosures, representations, and reporting forms as may be required with respect to the continuing obligations of the parties hereunder.

(The remainder of this page is intentionally left blank.)



**IN WITNESS WHEREOF**, the parties have caused this Regulatory Agreement to be signed by their respective duly authorized representatives as of the day and year first written above.

**CITY OF BROOKLYN PARK, MINNESOTA**

By \_\_\_\_\_  
Its: Mayor

By \_\_\_\_\_  
Its: City Manager

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Jeffrey Lunde, the Mayor of the City of Brooklyn Park, Minnesota, on behalf of the City.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Jay Stroebel, the City Manager of the City of Brooklyn Park, Minnesota, on behalf of the City.

\_\_\_\_\_  
Notary Public



**U.S. BANK NATIONAL ASSOCIATION**

By \_\_\_\_\_  
Its Vice President

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF RAMSEY     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019,  
by \_\_\_\_\_, the Vice President of U.S. Bank National Association, a national banking  
association, on behalf of the national banking association.

\_\_\_\_\_  
Notary Public

[Signature page to Regulatory Agreement]

**EXHIBIT A**

**Legal Description of the Land  
(Brook Gardens)**

The Land described in this Regulatory Agreement is located in Hennepin County, Minnesota, and is legally described as follows:

The Easterly 577.56 feet of that part of the East 1/2 of the Southwest 1/4 of Section 28, Township 119 North, Range 21 West of the 5th Principal Meridian described as:

Beginning at a point on the South Line thereof distant 465.0 feet East to the Southwest corner of said East 1/2 of the Southwest 1/4; thence North and parallel with the West line thereof a distance of 633.0 feet; thence East parallel with the said South line to the East line of said Southwest 1/4; thence South along the said East Line of the South line of said Southwest 1/4; thence West to the point of beginning.

**EXHIBIT B**

**Form of Income Certification**

TENANT INCOME CERTIFICATION  <input type="checkbox"/> Initial Certification <input type="checkbox"/> Recertification <input type="checkbox"/> Other _____	Effective Date: _____ Move-in Date: _____ (MM/DD/YY): _____
--	---

**PART I. DEVELOPMENT DATA**

Property Name: Brook Gardens Apartments and Townhomes Address: 5550 69th Avenue North, Brooklyn Park, Minnesota	County: Hennepin Unit Number: _____	BIN #: _____ # Bedrooms: _____
--	---	-----------------------------------

**PART II. HOUSEHOLD COMPOSITION**

HH Br #	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YY)	F/T Student (Y or N)	Social Security or Alien Reg. No.
1			HEAD			
2						
3						
4						
5						
6						

**PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)**

HH Br #	(A) Employment or Wages	(B) Soc. Security / Pensions	(C) Public Assistance	(D) Other Income
TOTAL	\$	\$	\$	\$
Add totals from (A) through (D) above			TOTAL INCOME (E):	\$

<b>PART IV. INCOME FROM ASSETS</b>				
HH Mbr#	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
<b>TOTALS:</b>			\$	\$
Enter Column (H) Total if over \$5,000 \$ _____		Passbook Rate x 2.00 %	=	(J) Imputed Income \$
Enter the greater of the total column I, or J: imputed income				<b>TOTAL INCOME FROM ASSETS (K)</b> \$
(L) Total Annual Household Income from all sources [Add (E) + (K)]				\$

**HOUSEHOLD CERTIFICATION & SIGNATURES**

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full-time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

Signature	(Date)	Signature	(Date)
Signature	(Date)	Signature	(Date)

**PART V. DETERMINATION OF INCOME ELIGIBILITY**

TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES From Item (L) on page 1 \$ <span style="border: 1px solid black; display: inline-block; width: 100px; height: 20px; vertical-align: middle;"></span>	Household Meets Income Restriction at: <input type="checkbox"/> 60% <input type="checkbox"/> 50% <input type="checkbox"/> 40% <input type="checkbox"/> 30% <input type="checkbox"/> ___%	RECERTIFICATION ONLY: Current Income Limit x 140% \$ _____ Household income exceeds 140% at recertification: <input type="checkbox"/> Yes <input type="checkbox"/> No Household Size at Move-in: _____
Current Income Limit per Family Size: \$ _____  Household Income at Move-in \$ _____		

<b>PART VI. RENT</b>			
Tenant Paid Rent	\$ _____	Rent Assistance:	\$ _____
Utility Allowance	\$ _____	Other non-optional charges:	\$ _____
GROSS RENT FOR UNIT: Tenant paid rent plus Utility Allowance and other non-optional charges		Unit Meets Rent Restriction at:	
\$ <span style="border: 1px solid black; display: inline-block; width: 100px; height: 20px; vertical-align: middle;"></span>		<input type="checkbox"/> 60% <input type="checkbox"/> 50% <input type="checkbox"/> 40% <input type="checkbox"/> 30% <input type="checkbox"/> ____%	
Maximum Rent Limit for this unit: \$ _____			

<b>PART VII. STUDENT STATUS</b>		
ARE ALL OCCUPANTS FULL-TIME STUDENTS?  <input type="checkbox"/> yes <input type="checkbox"/> no	If yes, enter student explanation** (also attach documentation)  <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">             Enter 1-4           </div>	Student explanation: 1. TANF assistance 2. Job training program 3. Single parent/dependent child 4. Married/joint return*
<b><u>*Exception for married/joint return is the only exception available for units necessary to qualify tax-exempt bonds.</u></b>		

<b>PART VIII. PROGRAM TYPE</b>				
Mark the program(s) listed below (a. through e.) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification				
a. Tax Credit <input type="checkbox"/>	b. HOME <input type="checkbox"/>	c. Tax Exempt <input type="checkbox"/>	d. AHDP <input type="checkbox"/>	e. _____ <input type="checkbox"/> (Name of Program)
See Part V above.	<i>Income Status</i> <input type="checkbox"/> ≤ 50% AMGI <input type="checkbox"/> ≤ 60% AMGI <input type="checkbox"/> ≤ 80% AMGI <input type="checkbox"/> ≤ OI **	<i>Income Status</i> <input type="checkbox"/> 50% AMGI <input type="checkbox"/> 60% AMGI <input type="checkbox"/> 80% AMGI <input type="checkbox"/> OI **	<i>Income Status</i> <input type="checkbox"/> ≤ 50% AMGI <input type="checkbox"/> ≤ 80% AMGI <input type="checkbox"/> ≤ OI **	<i>Income Status</i> <input type="checkbox"/> _____ <input type="checkbox"/> ≤ OI **
** Upon recertification, household was determined over income (OI) according to eligibility requirements of the program(s) marked above.				
<b>SIGNATURE OF OWNER / REPRESENTATIVE</b>				

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Land Use Restriction Agreement (if applicable), to live in a unit in this Project.

\_\_\_\_\_  
SIGNATURE OF OWNER / REPRESENTATIVE

\_\_\_\_\_  
DATE

**INSTRUCTIONS FOR COMPLETING  
TENANT INCOME CERTIFICATION**

*This form is to be completed by the owner or an authorized representative.*

**Part I – Development Data**

Check the appropriate box for Initial Certification (move-in), Recertification (annual recertification), or Other. If Other, designate the purpose of the recertification (i.e., a unit transfer, a change in household composition, or other state-required recertification).

- Move-in Date            Enter the date the tenant has or will take occupancy of the unit.
- Effective Date            Enter the effective date of the certification. For move-in, this should be the move-in date. For annual recertification, this effective date should be no later than one year from the effective date of the previous (re)certification.
- Property Name            Enter the name of the development.
- County                    Enter the county (or equivalent) in which the building is located.
- BIN #                      Enter the Building Identification Number (BIN) assigned to the building (from IRS Form 8609).
- Address                    Enter the unit number.
- Unit Number              Enter the unit number.
- # Bedrooms                Enter the number of bedrooms in the unit.

**Part II – Household Composition**

List all occupants of the unit. State each household member’s relationship to the head of the household by using one of the following coded definitions:

- |   |                   |   |                     |
|---|-------------------|---|---------------------|
| H | Head of household | S | Spouse              |
| A | Adult co-tenant   | O | Other family member |
| C | Child             | F | Foster child        |
| L | Live-in caretaker | N | None of the above   |

Enter the date of birth, student status, and Social Security number or alien registration number for each occupant.

*If there are more than seven occupants, use an additional sheet of paper to list the remaining household members and attach it to the certification.*

**Part III – Annual Income**

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income, including acceptable forms of verification.

From the third party verification forms obtained from each income source, enter the gross amount anticipated to be received for the 12 months from the effective date of the (re)certification. Complete a separate line for each income-earning member. List the respective household member number from Part II.

- Column (A) Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment; distributed profits and/or net income from a business.
- Column (B) Enter the annual amount of Social Security, Supplemental Security Income, pensions, military retirement, etc.
- Column (C) Enter the annual amount of income received from public assistance (i.e., TANF, general assistance, disability, etc.)
- Column (D) Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household.
- Row (E) Add the totals from columns (A) through (D) above. Enter this amount.

**Part IV – Income from Assets**

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income from assets, including acceptable forms of verification.

From the third party verification forms obtained from each asset source, list the gross amount anticipated to be received during the 12 months from the effective date of the certification. List the respective household member number from Part II and complete a separate line for each member.

- Column (F) List the type of asset (i.e., checking account, savings account, etc.)
- Column (G) Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification).
- Column (H) Enter the cash value of the respective asset.
- Column (I) Enter the anticipated annual income from the asset (i.e., savings account balance multiplied by the annual interest rate).
- TOTALS Add the total of Column (H) and Column (I), respectively.

If the total in Column (H) is greater than \$5,000, you must do an imputed calculation of asset income. Enter the Total Cash Value, multiply by 2% and enter the amount in (J), Imputed Income.

- Row (K) Enter the Greater of the total in Column (I) or (J)
- Row (L) Total Annual Household Income from All Sources Add (E) and (K) and enter the total

**HOUSEHOLD CERTIFICATION AND SIGNATURES**

After all verifications of income and/or assets have been received and calculated, each household member age 18 or older must sign and date the Tenant Income Certification. For move-in, it is recommended that the Tenant Income Certification be signed no earlier than five days prior to the effective date of the certification.

**Part V – Determination of Income Eligibility**

Total Annual Household Income from all sources	Enter the number from item (L).
Current Income Limit per Family Size	Enter the Current Move-in Income Limit for the household size.
Household income at move-in Household size at move-in	For recertifications only. Enter the household income from the move-in certification. On the adjacent line, enter the number of household members from the move-in certification.
Household Meets Income Restriction	Check the appropriate box for the income restriction that the household meets according to what is required by the set-aside(s) for the project.
Current Income Limit x 140%	For recertification only. Multiply the Current Maximum Move-in Income Limit by 140% and enter the total. Below, indicate whether the household income exceeds that total. If the Gross Annual Income at recertification is greater than 140% of the current income limit, then the available unit rule must be followed.

**Part VI – Rent**

Tenant Paid Rent	Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).
Rent Assistance	Enter the amount of rent assistance, if any.
Utility Allowance	Enter the utility allowance. If the owner pays all utilities, enter zero.
Other non-optional charges	Enter the amount of non-optional charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.
Gross Rent for Unit	Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges.
Maximum Rent Limit for this unit	Enter the maximum allowable gross rent for the unit.
Unit Meets Rent Restriction at ___%	Check the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the project.

**Part VII – Student Status**

If all household members are full-time\* students, check “yes.” If at least one household member is not a full-time student, check “no.”

If “yes” is checked, the appropriate exemption must be listed in the box to the right. If none of the exemptions apply, the household is ineligible to rent the unit.

\* *Full time is determined by the school the student attends.*

### **Part VIII – Program Type**

Mark the program(s) for which this unit will be counted toward the property’s occupancy requirements. Under each program marked, indicate the household’s income status as established by this certification/recertification. If the property does not participate in the HOME, Tax-Exempt Bond, Affordable Housing Disposition, or other housing program, leave those sections blank.

Tax Credit                      See Part V above.

HOME                              If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set-asides, mark the appropriate box indicating the household’s designation.

Tax Exempt                      If the property participates in the Tax Exempt Bond program, mark the appropriate box indicating the household’s designation.

AHDP                              If the property participates in the Affordable Housing Disposition Program (AHDP), and this household’s unit will count towards the set-aside requirements, mark the appropriate box indicating the household’s designation.

Other                                If the property participates in any other affordable housing program, complete the information as appropriate.

### **SIGNATURE OF OWNER / REPRESENTATIVE**

It is the responsibility of the owner or the owner’s representative to sign and date this document immediately following execution by the resident(s).

The responsibility of documenting and determining eligibility (including completing and signing the Tenant Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well-trained in tax credit compliance.

*These instructions should not be considered a complete guide on tax credit compliance. The responsibility for compliance with federal program regulations lies with the owner of the building(s) for which the credit is allowable.*

**EXHIBIT C**

**Certificate of Continuing Program Compliance**

\_\_\_\_\_, 20\_\_

TO: City of Brooklyn Park, Minnesota  
5200 85th Avenue North  
Brooklyn Park, Minnesota 55443  
Attention: Latonia Green, City Finance Director

and (prior to the discharge of the Bonds (hereinafter defined))

U.S. Bank National Association  
60 Livingston Avenue  
EP-MN-WS3C  
St. Paul, Minnesota 55107-2292  
Attn: Corporate Trust Services

Re: Multifamily Housing Revenue Refunding Bonds (Amorce I Limited Partnership Project), Series 2019A (the "Series 2019A Bonds") and Multifamily Housing Revenue Refunding Note, Series 2019B (the "Series 2019B Note" and, together with the Series 2019A Bonds, the "Bonds")

The undersigned, an authorized representative for Amorce I Limited Partnership, a Minnesota limited partnership (the "Owner"), hereby certifies, represents, and warrants that:

1. The Owner owns the multifamily housing project located in the City of Brooklyn Park, Hennepin County, Minnesota and known as Brook Gardens Apartments and Townhomes (the "Project").

2. The undersigned and the Owner have read and are thoroughly familiar with the provisions of (1) the Regulatory Agreement, dated as of August 1, 2019 (the "Regulatory Agreement"), between the Owner, the City of Brooklyn Park, Minnesota (the "Issuer"), and U.S. Bank National Association (the "Trustee"); (2) the Loan Agreement, dated as of August 1, 2019 (the "Series 2019A Loan Agreement"), between the Owner and the Issuer with respect to the Series 2019A Bonds; and (3) the Loan Agreement, dated as of August [\_\_\_], 2019 (the "Series 2019B Loan Agreement" and, together with the Series 2019A Loan Agreement, the "Loan Agreements"), between the Owner and the Issuer with respect to the Series 2019B Note. The Regulatory Agreement was executed, delivered, and recorded against the Project in connection with the issuance of the Bonds.

3. A review of the activities of the Owner and of the Owner's performance under the Regulatory Agreement and the Loan Agreements during the year ending \_\_\_\_ has been made under the supervision of the undersigned.

4. The Project's Qualified Project Period commenced on \_\_\_\_\_, \_\_\_\_ (the date on which 10% of the residential units in the Project were occupied), and will end on the latest of:

(i) \_\_\_\_\_, \_\_\_\_ (the date which is 15 years after the date on which 50% of the residential units in the Project were occupied);

(ii) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding, or

(iii) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates.

5. As of the date of this Certificate, the following percentages of completed residential units in the Project are (i) occupied by Low Income Tenants or (ii) currently vacant and being held available for occupancy by Low Income Tenants and have been so held continuously since the date a Low Income Tenant vacated such unit, as indicated:

Occupied by Low Income Tenants	_____ % Units	Nos. _____
Continuously held vacant for occupancy by Low Income Tenants since last occupied by Low Income Tenants	_____ % Units	Nos. _____

6. At no time since the date of filing of the last Continuing Program Compliance Certificate (or since the issuance of the Bonds, if this is the first such certificate) has less than \_\_\_\_\_ units representing 40% of the completed units in the Project been occupied by or were last occupied by Low Income Tenants.

7. As of the date of this Certificate, at least 40% of the units in the Project are (i) occupied by persons or families with Adjusted Income which does not exceed 60% of the Median Income for the Area adjusted for household size; or (ii) held vacant for occupancy for persons or families with Adjusted Income which does not exceed 60% of the Median Income for the Area adjusted for household size. Project Units occupied or held vacant for persons or families with Adjusted Income which does not exceed 60% of the Median Income for the Area adjusted for household size include Unit numbers \_\_\_\_\_.

8. At all times since the date of filing of the last Continuing Program Compliance Certificate the rent on at least 20% of the units in the Project has been equal to or less than applicable area fair market rents or exception fair market rents for existing housing as established from time to time by the United States Department of Housing and Urban Development. The rental rates of all units in the Project for which project-based federal assistance payments will be made under a Section 8 Housing Assistance Payment Contract are deemed to be within the rent limitations of Section 474.047A, subdivision 1(a) of Chapter 474.

9. To the knowledge of the undersigned, after due inquiry, all units were rented or available for rental on a continuous basis during the immediately preceding year to members of the general public, and the Owner is not now and has not been in default under the terms of the Regulatory Agreement and the Loan Agreements and, to the knowledge of the undersigned, no Determination of Taxability has occurred with respect to the Bonds.

10. [CHOOSE ONE: None/One or more] of the Tenants in the Project are currently receiving assistance under Section 8 of the United States Housing Act of 1937.

11. Unless otherwise expressly provided herein or unless the context requires otherwise, the capitalized terms used but not defined herein shall have the meaning assigned to such terms in the Regulatory Agreement.

12. The Owner has not transferred any interest in the Project since the date of submission of the Continuing Program Compliance Certificate last submitted to the Trustee and the Issuer with respect to the Project. **(If the Owner has transferred any interest in the Project, such transfer should be detailed here.)**

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Dated: \_\_\_\_\_, 20\_\_.

**AMORCE I LIMITED PARTNERSHIP,**  
a Minnesota limited partnership

By: Amorce I GP LLC,  
a Minnesota limited liability company  
Its: General Partner

By: \_\_\_\_\_

Its: \_\_\_\_\_

## HUD RIDER TO RESTRICTIVE COVENANTS

This RIDER TO RESTRICTIVE COVENANTS (“Rider”) is made as of August 1, 2019, by AMORCE I LIMITED PARTNERSHIP, a Minnesota limited partnership (“Borrower”), U.S. BANK NATIONAL ASSOCIATION, a national banking association (the “Trustee”) and the CITY OF BROOKLYN PARK, MINNESOTA, a home rule charter city, municipal corporation and political subdivision of the State of Minnesota (the “Issuer”).

WHEREAS, Borrower has obtained financing from Dougherty Mortgage LLC, a Delaware limited liability company (“FHA Lender”) for the benefit of the project known as Brook Gardens Apartments and Townhomes (the “Project”), which loan is secured by a Multifamily Mortgage, Assignment of Leases and Rents, and Security Agreement (Minnesota), dated as of August 1, 2019 (“Security Instrument”), filed in the office of the County Recorder and Registrar of Titles of Hennepin County simultaneously herewith and is insured by the United States Department of Housing and Urban Development (“HUD”);

WHEREAS, Borrower has received tax-exempt bond financing from the Issuer, which Issuer is requiring certain restrictions be recorded against the Project; and

WHEREAS, HUD requires as a condition of its insuring FHA Lender’s financing to the Project, that the lien and covenants of the Regulatory Agreement to which this Rider is attached (“Restrictive Covenants”) be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

WHEREAS, the Issuer and the Trustee have agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan in accordance with the terms of this Rider.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Rider, the provision contained in this Rider shall govern and be controlling in all respects as set forth more fully herein.

(b) The following terms shall have the following definitions:

“Code” means the Internal Revenue Code of 1986, as amended.

“FHA Lender” means Dougherty Mortgage LLC, a Delaware limited liability company, its successors and assigns.

“Mortgage Loan” means the mortgage loan made by FHA Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

“Mortgage Loan Documents” means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or FHA Lender in connection with the Mortgage Loan.

“Security Instrument” means the mortgage or deed of trust from Borrower in favor of FHA Lender, as the same may be supplemented, amended or modified.

“HUD” means the United States Department of Housing and Urban Development.

“HUD Regulatory Agreement” means the Regulatory Agreement for Multifamily Projects between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

“National Housing Act” means the National Housing Act of 1934, as amended.

“Program Obligations” has the meaning set forth in the Security Instrument.

“Residual Receipts” has the meaning specified in the Program Obligations.

“Surplus Cash” has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in the Restrictive Covenants to the contrary, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the “HUD Requirements”). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Issuer’s ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower’s knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In the event of foreclosure (or deed in lieu of foreclosure) of the Mortgage Loan, the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate.

(e) Borrower and the Issuer acknowledge that Borrower’s failure to comply with the covenants provided in the Restrictive Covenants does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.

(f) Except for the Issuer’s reporting requirement, in enforcing the Restrictive Covenants the Issuer will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

- i. Available Surplus Cash, if the Borrower is a for-profit entity;
- ii. Available distributions of Surplus Cash and Residual Receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
- iii. Available Residual Receipts authorized by HUD, if the Borrower is a non-profit entity.

(g) For so long as the Mortgage Loan is outstanding, Borrower and Issuer shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD’s prior written consent.

(h) Subject to the HUD Regulatory Agreement, the Issuer may require the Borrower to indemnify and hold the Issuer harmless from all loss, cost, damage and expense arising from any claim or

proceeding instituted against Issuer relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Issuer harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.

(i) No action shall be taken in accordance with the rights granted herein to preserve the tax exemption of the interest on the notes or bonds, or prohibiting the owner from taking any action that might jeopardize the tax-exemption, except in strict accord with Program Obligations.

*[Signature Pages to Follow]*

Execution page of the Issuer to the HUD Rider.

**CITY OF BROOKLYN PARK, MINNESOTA**

By \_\_\_\_\_  
Its Mayor

By \_\_\_\_\_  
Its City Manager

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Jeffrey Lunde, the Mayor of the City of Brooklyn Park, Minnesota, on behalf of the City of Brooklyn Park, Minnesota.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Jay Stroebel, the City Manager of the City of Brooklyn Park, Minnesota, on behalf of the City of Brooklyn Park, Minnesota.

\_\_\_\_\_  
Notary Public

Execution page of the Borrower to the HUD Rider.

**AMORCE I LIMITED PARTNERSHIP,**  
a Minnesota limited partnership

By: Amorce I GP LLC,  
a Minnesota limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Name: Lori Boisclair  
Its: President/Chief Manager

STATE OF MINNESOTA     )  
  ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Lori Boisclair, the President/Chief Manager, of Amorce I GP LLC, a Minnesota limited liability company, the general partner of Amorce I Limited Partnership, a Minnesota limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public

Execution page of the Trustee to the HUD Rider.

**U.S. BANK NATIONAL ASSOCIATION**

By \_\_\_\_\_  
Its Vice President

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF RAMSEY     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019,  
by \_\_\_\_\_, the Vice President of U.S. Bank National Association, a national banking association,  
on behalf of the national banking association.

\_\_\_\_\_  
Notary Public

**EXHIBIT A**  
**to**  
**UCC-1 Financing Statement**  
**Naming**  
**City of Brooklyn Park, Minnesota, as Debtor**  
**and**  
**U.S. Bank National Association, as Secured Party**

Pursuant to the provisions of the Trust Indenture, dated as of August 1, 2019 (the "Indenture"), between the City of Brooklyn Park, Minnesota, (the "Debtor") and U.S. Bank National Association (the "Secured Party") relating to the Multifamily Housing Revenue Refunding Bonds (Amorce I Limited Partnership Project), Series 2019A, issued by the Debtor in the original aggregate principal amount of \$[8,540,000] (the "Bonds"), the Debtor has assigned and granted to the Secured Party the following (all capitalized terms have the meaning assigned in the Indenture):

(i) the Issuer Revenues, including, without limitation, all Loan Payments and other amounts receivable by or on behalf of the Debtor under the Loan Agreement in respect of repayment of the Loan, (ii) the Special Funds, including all accounts in those funds and all money deposited therein and the investment earnings on such money; and the earnings derived from the investment of any of the foregoing sums as provided herein, (iii) all right, title and interest of the Debtor in the proceeds derived from the sale of the Bonds, and any securities in which money in the Special Funds is invested, and (except for money in the Rebate Fund and otherwise required to be rebated to the United States of America under the Code) the proceeds derived therefrom, and any and all other real or personal property of every name and nature from time to time hereafter by delivery or by writing of any kind pledged, assigned or transferred, as and for additional security under the Indenture by the Debtor or by anyone in its behalf, or with its written consent, to the Secured Party, which is authorized by the Indenture to receive any and all such property at any and all times and to hold and apply the same subject to the terms of the Indenture, and (iv) the Loan Agreement, except for the Unassigned Issuer's Rights.

# City of Brooklyn Park Request for Council Action

<b>Agenda Item:</b>	7.2	<b>Meeting Date:</b>	July 22, 2019
<b>Agenda Section:</b>	General Action Items	<b>Originating Department:</b>	Administration
<b>Resolution:</b>	N/A	<b>Prepared By:</b>	Wokie Freeman-Gbogba, Assistant City Manager
<b>Ordinance:</b>	N/A		
<b>Attachments:</b>	2	<b>Presented By:</b>	Wokie Freeman-Gbogba
<b>Item:</b>	Sister City Relationships Process and Proposal		

## City Manager's Proposed Action:

Accept Process and Criteria for Sister City Relationships and approve proposal and direct staff to establish a new Sister City Relationship with Garowe, Somalia.

MOTION \_\_\_\_\_, SECOND \_\_\_\_\_, TO ACCEPT THE PROCESS AND CRITERIA FOR SISTER CITY RELATIONSHIPS.

MOTION \_\_\_\_\_, SECOND \_\_\_\_\_, TO APPROVE THE PROPOSAL AND DIRECT STAFF TO ESTABLISH A NEW SISTER CITY RELATIONSHIP WITH GAROWE, SOMALIA.

## Overview:

On June 3, 2019, a draft document outlining the process and criteria for sister city relationships was shared with the City Council and direction was given to move forward with finalizing the process.

Also, a proposal to establish a sister city relationship between Garowe in Puntland, Somalia and Brooklyn Park has been submitted to the City Manager's office. Based on the new process, all sister city relationships must be reviewed and approved by the City Council and Mayor before an official invitation to proceed can be extended. The proposal meets all requirements of the Process and Criteria and is being recommended for approval to establish a sister city relationship.

A Sister City Agreement and Sponsor Agreement will be developed and brought forth to the City Council for a final approval.

## Primary Issues/Alternatives to Consider:

The City Council may or may not accept the Process and Criteria for Sister City Relationships. The City Council may or may not approve the sister city proposal from Garowe in Puntland, Somalia.

## Budgetary/Fiscal Issues:

Potentially, membership in Sister Cities International and potential travel and hosting costs.

## Attachments:

- 7.2A PROCESS AND CRITERIA FOR SISTER CITY PARTNERSHIPS
- 7.2B PROPOSAL FROM GAROWE, SOMALIA

## City of Brooklyn Park

### Process and Criteria for Sister City Relationships

#### A. Process for establishing new sister city relationships

Organizations interested in starting a sister city relationship should contact the City of Brooklyn Park Community Engagement Division to discuss the requirements for submitting a proposal. To be considered, a proposal must meet the requirements described below. Submission of a proposal does not guarantee that Brooklyn Park will enter into a sister city relationship.

The City Manager, or his/her designee, will review the proposal and may recommend that the proposal be submitted to the City Council for review and approval. All sister city relationships must be approved by the City Council and Mayor before an official invitation to proceed can be extended.

#### The following definitions are used for the purpose of this document:

**Sponsor organization:** A Brooklyn Park organization that will manage the sister city relationship. The organization must be based in Minnesota, and either designated by the Internal Revenue Service as a 501(c)(3) non-profit and registered with the Minnesota Secretary of State or have a fiscal agent that meets the same criteria.

**Sister city committee:** The same as the sponsor organization or a committee of the sponsor organization organized to manage the sister city relationship.

**Sister City:** A city that has a formal relationship with Brooklyn Park recognized by a Sister City Agreement.

**Sister City Agreement:** A memorandum of understanding between Brooklyn Park and another city outlining the terms of the sister city relationship.

**Sponsor Agreement:** A memorandum of understanding between the City of Brooklyn Park and a sponsor organization outlining the requirements for managing the sister city relationship.

#### B. Proposal Requirements

1. Demographic profile of the proposed sister city.
2. Description of the benefits to both cities.
3. Description of how the sister city relationship will support the goals of the City of Brooklyn Park.
4. Membership list for the proposed sister city committee.
5. Description of the proposed sister city's expectations for the relationship with Brooklyn Park.
6. Letter of invitation from the Mayor of the proposed sister city.
7. List of at least 20 Brooklyn Park residents interested in participating in the sister city relationship. This must include address, phone number and e-mail address for each person.
8. Optional: Letters of support.

**C. Criteria**

1. Brooklyn Park does not have a sister city relationship with any other cities in the country.
2. The relationship is multi-purpose and presents the opportunity for benefits to both cities.
3. The sister city relationship supports the City of Brooklyn Park's goals and objectives.
4. There is solid current and long-term local support for the new relationship:
  - a. Business connections.
  - b. Financial support from groups and individuals.
  - c. Governmental, educational and cultural interest.
5. The potential sister city has demonstrated strong interest in and commitment to the relationship.
6. There is involvement from Brooklyn Park residents.

**D. Requirements for creating and maintaining a sister city relationship**

If a sister city relationship is approved, the following steps will be followed:

1. The Mayor of Brooklyn Park will send a letter to the Mayor of the proposed sister city.
2. The sponsor organization will be required to enter into a Sponsor Agreement with the City of Brooklyn Park.
  - a. As part of the Agreement the sponsor organization will be required to:
    - i. Be designated by the Internal Revenue Service as a 501(c)(3) non-profit and registered with the Minnesota Secretary of State or have a fiscal agent that meets the same criteria.
    - ii. Present an annual report.
    - iii. Facilitate exchanges between Brooklyn Park and the proposed sister city.
    - iv. Provide volunteer and financial resources to support the Sister City Agreement.
    - v. Maintain an active sister city committee, including the recruitment of new participants.
3. The Sister City Agreement and Sponsor Agreement will be developed and approved by City Council.
4. The Mayors sign the Sister City Agreement.
5. The Sister City Agreement is filed with Sister Cities International.

**E. Brooklyn Park 2025 Community Goals**

Working together to make Brooklyn Park a thriving community, inspiring pride where opportunities exist for all.

**By 2025, our community wants to accomplish these goals by 2025:**

1. A united and welcoming community, strengthened by our diversity.
2. Beautiful spaces and quality infrastructure make Brooklyn Park a unique destination.
3. A balanced economic environment that empowers businesses and people to thrive.
4. People of all ages have what they need to feel healthy and safe.
5. Partnerships that increase racial and economic equity empower residents and neighborhoods to prosper.
6. Effective and engaging government recognized as a leader.

**F. Objectives for a sister city relationship**

1. Explore economic development synergies between cities and develop avenues for local businesses who want to establish or expand international commercial initiatives.
2. Increase community awareness of the influence and impact that foreign policy and the global marketplace have on our community.
3. Provide more options for residents to experience, understand and appreciate other cultures.
4. Share best practices for city government.
5. Develop and support educational, cultural and people-to-people exchanges.

## **DEMOGRAPHICS OF THE CITY OF GAROWE.**

The city of Garowe is located in Nugaal Region between two valleys: Togga-Garowe to the north and Lan Alifirin to the south in the state of Puntland, Somalia. It is the administrative capital of Puntland State. The climate in the city is arid with orographic and coastal influences contributing to the high rainfall variability. Temperatures range average is about 77 degrees a year. Land use activities in the town are predominated by commerce (wholesale, retail shops and remittance bureaus), transport, housing, catering services, sale of petroleum products, and other small-scale enterprises (vehicle repair, metal work, carpentry, construction and health care).

The population of Garowe is estimated to be 190,000 people including the broader area around it. This population fluctuates with seasons as people move to the coastal region during the hot weather season. Provision of basic social services is fairly good, though the infrastructural support is inadequate. The highway system which connects the towns between northern and southern Somalia traverses Garowe and supports linkages of trade, local cereal supply and labor migration. Garowe serves as a key market for local quality livestock and a transit point for exporting quality livestock through the port of Bossaso to international markets.

Garowe has a number of academic institutions including 30 primary schools, high schools and university campuses and the only women's college in the region. The colleges offer anything from a two-year degree to a four-year degree depending on the area of study.

Garowe is served by couple of major hospitals including Garowe Regional Hospital in addition to numerous smaller private health clinics.

It is safe in Garowe with the availability of Puntland Forces and local police force. Since the inception of the state in 1998, Puntland has enjoyed some semblance of peace relative to other areas.

The city government is led by Ahmed Siciid Muuse also known as Ahmed Barre as the mayor.

## **BENEFITS OF BOTH CITIES**

Brooklyn Park/Garowe sister city relationship will provide opportunities for friendship, understanding, communications, commercial and cultural ties.

Minnesota hosts the largest Somali population outside of Somalia in the western hemisphere. Majority of them identify themselves through heritage to Puntland state where Garowe is the administrative capital.

Both cities can benefit from cultural exchanges and sharing of ideas in good governance, commerce, planning and education.

The Somali population has grown in the twin cities and there has been some recent migration of this population to Brooklyn Park. We can see Somali businesses, places of worship & learning and even events happening in Brooklyn Park in recent years.

Following this great uptick of positive activities, the Friends of Garowe in Minnesota Committee will facilitate more cultural exchanges, commerce connections and visibility by hosting regional events in Brooklyn Park.

## **HOW THE SISTER CITIES RELATIONSHIP WILL SUPPORT THE GOALS OF THE CITY OF BROOKLYN PARK**

Here is how a sister city relationship between Brooklyn Park and Garowe will support the goals of the city of Brooklyn Park.

Brooklyn Park’s goals include a united community strengthened by our diversity. There is great pride in creating this relation to the second largest immigrant community in Minnesota. It shows how we value diversity and are willing to forge friendship with new immigrants in our community.

Thriving economy. This relationship will open doors to the prospect of great commercial connection with a region that has great potential and interest in connecting with the city. We even had the minister of Commerce from the state of Puntland visit the city hall recently interested to learn more about the city.

Effective, engaging government. Brooklyn Park is recognized as a leader among major cities in Minnesota thus it was a great pride for Garowe to make a formal request to become a sister city. Garowe is interested to learn more about good governance including initiatives that improves people’s livability.

## **MEMBERSHIP LIST OF THE FRIENDS OF GAROWE IN MINNESOTA COMMITTEE:**

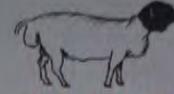
<b>NAME</b>	<b>ADDRESS</b>	<b>EMAIL</b>	<b>PHONE #</b>
HASSANEN MOHAMED	6589 DOUGLAS DR N BROOKLYN PARK, MN 55429	<a href="mailto:HASSANEN.MOHAMED@GMAIL.COM">HASSANEN.MOHAMED@GMAIL.COM</a>	612-296-0604
QAYS K CALY	1808 UNIVERSITY AVE NE. #431. MINNEAPOLIS, MN 55418	<a href="mailto:QAYS431@GMAIL.COM">QAYS431@GMAIL.COM</a>	612-412-7335
FARAH ISSE OMAR	4552 58 <sup>TH</sup> AVE N. #156. BROOKLYN CENTER, MN 55429	<a href="mailto:BAANE2009@GMAIL.COM">BAANE2009@GMAIL.COM</a>	952-452-3200

HORIYA YUSUF OSMAN	530 MILL STREET NE. COLUMBIA HEIGHTS, MN 55421	<a href="mailto:FOOSMUSSE@YAHOO.COM">FOOSMUSSE@YAHOO.COM</a>	612-222- 2925
MOHAMED AHMED MOHAMED	2508 PILLSBURY AVE S. MINNEAPOLIS, MN 55404	<a href="mailto:MSUDAYSI05@HOTMAIL.COM">MSUDAYSI05@HOTMAIL.COM</a>	612-248- 1686
HIBO GULED	1809 87 <sup>th</sup> TR N. BROOKLYN PARK, MN 55443	<a href="mailto:HIBOGULED@GMAIL.COM">HIBOGULED@GMAIL.COM</a>	612-986- 1580
ASHA A ALI	1808 UNIVERSITY AVE NE #431 MINNEAPOLIS, MN 55418	<a href="mailto:ASHAALI431@GMAIL.COM">ASHAALI431@GMAIL.COM</a>	612-414- 8698
ROBLE AHMED	3853 CLINTON AVE S. MINNEAPOLIS, MN 55409	<a href="mailto:GUREY65@GMAIL.COM">GUREY65@GMAIL.COM</a>	612-702- 0331
SALMA OSMAN GUREYE	12570 PORTLAND AVE S #322 BURNSVILLE, MN 55337	<a href="mailto:SALMA.OMAN@GMAIL.COM">SALMA.OMAN@GMAIL.COM</a>	763-614- 4290

## **EXPECTATIONS OF THE RELATIONSHIP WITH BROOKLYN PARK**

The expectation of this relationship is to form a friendship alliance that will enhance each other's culture through many cooperative activities that are mutual benefit to our communities.

DOWLADA HOOSE  
EE GAROOWE



THE LOCAL GOVERNMENT  
OF GAROWE

XAFIISKA DUQA  
Office of the mayor  
Email: [ahmed.barre@Garowecity.so](mailto:ahmed.barre@Garowecity.so)  
Tell+252-90-7794432/7746031

REF: GD/DG/236 /2019

15, June -2019

Hon. Mayor Jeffrey Lunde,

It is with great pleasure that I invite City of Brooklyn Park, Minnesota to enter into a sister city relationship with City of Garowe, Puntland Somalia on behalf of the many citizens of our community.

As we look to the future of this alliance, we envision a growing awareness and appreciation of each other's culture as well as many cooperative activities which will be of mutual benefit to our communities. From this small beginning we hope this partnership will continue for many generations, fostering educational, friendship, understanding, communication, commercial, professional and cultural exchanges. We look forward to the limitless possibilities of this relationship.

Although this partnership will begin with an agreement between our respective city governments, we see the strength and vitality of this long-term association residing in the organizations, schools, businesses, and individuals of our citizenry. On our end, we have identified a group of men and women to establish the sister city committee and who will be instrumental in guiding the partnership at this early stage. These individuals will be responsible for working with you and your community to develop a mutually acceptable sister city agreement and to prepare a plan for the initial activities and exchanges that will take place. We suggest that a similar body of individuals be assembled in Minnesota. Please note that Hassanen Mohamed will be your point of contact for finalizing the agreement and planning the initial activities. He can be reached at 612 296 0604, email: [hassanen.mohamed@gmail.com](mailto:hassanen.mohamed@gmail.com)

We truly hope that the great city of Brooklyn Park, Minnesota will seriously consider this opportunity to partner with our city of Garowe, Puntland Somalia. We eagerly await your response and would be happy to address any questions or reservations you might have.

Sincerely,

Ahmed Said Musse  
Mayor of Garowe District





**Confederation of Somali Community in Minnesota**  
1507 S 6th Street, Minneapolis, MN 55454  
Phone (612) 605-3222 - Fax (612) 605-3266

Wokie Freeman-Gbogba  
Assistant City Manager  
City of Brooklyn Park, Minnesota  
5200 85<sup>th</sup> Ave N.  
Brooklyn Park, MN 55443

June 19<sup>th</sup> 2019

Dear Mrs. Wokie Freeman-Gbogba,

Please accept this letter of support from the Confederation of Somali Communities in Minnesota (CSCM) to serve as the fiscal agent for the Friends of Garowe in Minnesota Committee in Brooklyn Park, MN. It is with great pleasure that we support this important initiative by serving as the fiscal agent.

This letter of support also serves as our assertion that we are a designated 501(c)(3) organization.

We look forward to working with Friends of Garowe in Minnesota Committee team over the next few years to ensure that the partnership that they are planning to bring about between the cities of Garowe, Puntland Somalia and Brooklyn Park, Minnesota is successful and meeting all and any deliverables on time.

Sincerely,

Executive Director

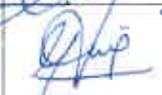
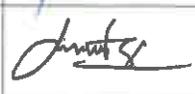
Kamaal Mohamed

**Confederation of Somali  
Community in Minnesota  
(CSCM)**

**PETITION IN SUPPORT OF THE CREATION OF SISTER CITIES BETWEEN  
THE CITY OF BROOKLYN PARK, MINNESOTA AND GAROWE  
PUNTLAND, SOMALIA.**

We the residence of Brooklyn Park, Minnesota petition the city of Brooklyn Park, Minnesota in support of the creation of sister cities between our city and the city of Garowe, Puntland Somalia.

We believe there is a mutual benefit for this endeavor because it will bring the connection we need in building lifelong friendships with cities from across the world.

	NAME	ADDRESS	PHONE #	SIGNATURE
1	HASSANEN MOLTANEN	6589 Douglas Dr. N Brooklyn Park, MN 55429	612-296 0604	
2	Farkan Nur	6589 Douglas Dr. N Brooklyn Park, MN 55429	(612)532-1190	
3	Ismail Hussain	5540 VILLAGE CREEK PKWY N BROOKLYN PARK 55443	651-808- 5766	
4	ZAMZAM JAMA	5540 Village Creek Parkway N Brooklyn Park 55443	612-402- 1470	
5	Hiba Lgul ed	1809 87th Trl N Brooklyn Park 55443	612-986-1588	
6	Idris Adefayo	6805 Fremont Pl N. Brooklyn (tr 55430	651 410 6181	
7	Denise Butler	7552 Gardenwood Ave. BP, MN 55443	on file 763 657-7711	
8	Abdul Kromah	3911 Brookdale Cir Brooklyn Park, MN 55443	651 985 4455	
9	Ahmed Sinayko	6737 Humboldt Ave Brooklyn park MN 55430	320 493 0701	
10	Fumka Dukiya	8260 W. Xiyu Rd Brooklyn Park MN 55443	763 221-1398	
11	MUSAH ABU	8149 Xerxes N NOR 55444	612-396 2680	
12	Edward Solomon	7541 Long. Ave W Brooklyn Park MN 55429	763 222-7227	

**PETITION IN SUPPORT OF THE CREATION OF SISTER CITIES BETWEEN  
THE CITY OF BROOKLYN PARK, MINNESOTA AND GAROWE  
PUNTLAND, SOMALIA.**

We the residence of Brooklyn Park, Minnesota petition the city of Brooklyn Park, Minnesota in support of the creation of sister cities between our city and the city of Garowe, Puntland Somalia.

We believe there is a mutual benefit for this endeavor because it will bring the connection we need in building lifelong friendships with cities from across the world.

	NAME	ADDRESS	PHONE #	SIGNATURE
13	Yusuf Fartoh	5651 69th Ave n brooklyn park	6124237597	
14	<del>Vabooje Dukuly</del>	<del>5317</del>	<del>763-4000087</del>	
15	Musbay Badmas	7940 Oregon Ave N Brooklyn Park 55445	763-670-6567	
16	Seyda	8411 Regent Ave. N Brooklyn Park MN	6129867408	
17	<del>Martenneh Kuyateh</del>	<del>834 66th Ave N Brooklyn Center MN 55423</del>	<del>7632215247</del>	<del></del>
18	Koojo Komara	5651 69th AVEN Brooklyn Park 55429	612 283 695205	
19	<del>Tasana Dukuly</del>	<del>Brooklyn Center</del>	<del>3128710140</del>	<del></del>
20	Dukuly Vaboye Mohamed	5317 Brookdale DR N 55443	763-400 0080	
21	Noah Jaungh	7828 Yates Ave Brooklyn Park MN 55444	651-283 4268	
22	Mohamed Kromah	8457 Regent Ave Brooklyn Park, MN 55443	763-528-0862	
23	Dukuly Maison	5621 69th Ave North 55429	763-807 2284	
24	Darius J	6330 Welcome Ave n. Brooklyn Park, MN 55429	267-591-7797	

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	<b>NAME</b>	<b>ADDRESS</b>	<b>PHONE #</b>	<b>SIGNATURE</b>
25	Othello Pante G.	5642 100th LN N. 55443	612-805- 9078	
26				
27				
28				
29				
30				